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99-7504 (3) ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1999

C.A NO. 99-1611
D.C. NO. 98-4223

CHRISTOPHER A. LOPEZ,

Petitioner,

v.

RANDY J. DAVIS, Warden, Federal Prison Camp, Yankton; and FEDERAL BUREAU OF PRISONS,

Respondent.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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APPENDIX 1

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 99-1203/1204/1205/1206/1207/1211/1212/1213/1214/1611

Calvern J. Bellis, Shon Pierson, Brian T. Shields, David J. Miller, Thane Martin, George Cook, Ryan Scott Clark, Sean A. Winston, Tim Walker, and Christopher A. Lopez,	*	
Appellees,	*	Appeals from the United States District Court for the District of South Dakota.
v.	*	
Randy J. Davis, Warden, Federal Prison Camp, Yankton, South Dakota; and Federal Bureau of Prisons,	*	
Appellants.	*	

Submitted: May 12, 1999

Filed: August 10, 1999

Before LOKEN, HANSEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

MORRIS SHEPPARD ARNOLD, Circuit Judge.

In these consolidated appeals, ten federal prisoners petitioned for a writ of habeas corpus, *see* 28 U.S.C. § 2241(a), against the U.S. Bureau of Prisons (BOP) and Warden Randy Davis of the Federal Prison Camp in Yankton, South Dakota. Each of the appellees has completed or is scheduled to complete the BOP's voluntary residential drug abuse treatment program, *see* 18 U.S.C. § 3621(b). The statute, *see* 18 U.S.C. § 3621(e)(2), authorizes the BOP to offer an early-release incentive to certain federal prisoners in order to encourage them to enroll in its voluntary drug abuse treatment program. The statute also provides that "[t]he period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve," *see* 18 U.S.C. § 3621(e)(2)(B).

To implement the statute, the BOP promulgated regulations and a program statement which together define inmates' eligibility for the early-release incentive. *See* 28 C.F.R. § 550.58 and Federal Bureau of Prisons Program Statement 5162.04, (categorization of offenses) (Oct. 9, 1997). The regulations and the program statement identify two groups of offenses. The first consists of various federal offenses that the director of the BOP has determined to be "crimes of violence"; inmates convicted of these offenses are, by the terms of the statute, excluded from eligibility for the early-release incentive. *See* Federal Bureau of Prisons Program Statement 5162.04, §§ 1-2, §§ 5-6, § 9. The second is a group of crimes (called "director's discretion offenses") a conviction for which renders an inmate ineligible for the early-release incentive. *See* 28 C.F.R. § 550.58(a)(1)(iv), § 550.58(a)(1)(vi)(A), § 550.58(a)(1)(vi)(B), § 550.58(a)(1)(vi)(C), and Federal Bureau of Prisons Program Statement 5162.04, §§ 1-2, § 5, § 7, § 9. It is this second group of offenses that is at issue in this appeal.

The regulations pertaining to "director's discretion offenses" state, *inter alia*, that inmates convicted of "a felony ... [t]hat involved the carrying, possession, or use of a firearm or other dangerous weapon" are not eligible for early release. *See* 28 C.F.R. § 550.58(a)(1)(vi)(B). Section 7 of the program statement identifies more particularly

the offenses that the director of the BOP has decided will preclude eligibility for early release. Relying on the regulations and the program statement, the BOP determined that the appellees were ineligible for the early-release incentive, either because they had been convicted of being a felon in possession of a firearm, or because they had received a sentencing enhancement under the federal sentencing guidelines for possession of a dangerous weapon during the commission of a federal drug offense.

In their petitions to the district court, the appellees contended that the BOP exceeded its statutory authority by categorically excluding inmates who were not convicted of violent offenses from eligibility for the early-release incentive. The district court granted the appellees' petitions, and the BOP and the warden appeal. We disagree.

We have previously recognized that 18 U.S.C. § 3621(e)(2) vests broad discretion in the BOP to determine which individuals, among the group of statutorily eligible inmates convicted of nonviolent offenses, are appropriate candidates for early release. *See Love v. Tippy*, 133 F.3d 1066, 1069 (8th Cir. 1998), *cert. denied*, 118 S. Ct. 2376 (1998). The statute states only that the prison term of an inmate convicted of a nonviolent offense "*may* be reduced by the Bureau of Prisons" (emphasis added), *see* 18 U.S.C. § 3621(e)(2)(B). The language is discretionary and does not mandate that the BOP grant a sentence reduction to any particular inmate or class of inmates. *Cf. Morgan v. Rabun*, 128 F.3d 694, 699 (8th Cir. 1997), *cert. denied*, 118 S. Ct. 1809 (1998) (finding "may" language in state statute discretionary). Under the plain language of this statute, "[c]ommission of a 'nonviolent offense' makes a prisoner eligible for consideration but does not ... grant the boon he seeks. Eligibility is not entitlement." *Bush v. Pitzer*, 133 F.3d 455, 457 (7th Cir. 1997).

Nor does the statute mandate that the BOP exercise its discretion by making individual, rather than categorical, assessments of eligibility for inmates convicted of nonviolent offenses. In fact, Congress expected the BOP to make early-release

determinations "based on criteria to be established and uniformly applied," H.R. Rep. No. 103-320 (section-by-section analysis), 1993 WL 537335 (Nov. 3, 1993). It is well settled, moreover, that where Congress has left a gap in a statute for an agency to fill, we defer to the agency's interpretation so long as it is a permissible construction of the statute. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-45, 866 (1984); *see also Love*, 133 F.3d at 1069.

The BOP chose to exercise the discretion granted to it under the statute by identifying additional categories of inmates who are ineligible for the early-release program because, although their offenses may be "nonviolent" within the meaning of the statute, their underlying conduct indicates that they pose a serious risk to public safety. We think that the BOP's decision to exclude these additional categories of inmates from eligibility represents a manifestly permissible construction of the statute and an appropriate exercise of the BOP's discretion.

The appellees contend that the BOP's current regulations and the program statement interpreting the relevant statutory language are contrary to our decision in *Martin v. Gerlinski*, 133 F.3d 1076 (8th Cir. 1998). We disagree. In *Martin*, 133 F.3d at 1078, we examined the portion of the statute that limits eligibility for early release to nonviolent offenders, *see* 18 U.S.C. § 3621(e)(2)(B). In striking down an earlier set of regulations that attempted to interpret the statutory term "nonviolent offense," we held that the BOP must look to the offense of conviction, not to sentencing factors, in determining whether an offender was convicted of a "nonviolent offense" and thus eligible under the statute for the early-release incentive. *Martin*, 133 F.3d at 1079-81. We did not, however, address the question at issue in this appeal, namely, whether the BOP may, as an exercise of its discretion, *see* 28 C.F.R. § 550.58(a)(1), look to sentencing factors in deciding which individuals among statutorily eligible inmates are appropriate candidates for early release. *Martin* is therefore of no relevance to the present case.

We conclude that the BOP acted within its authority in excluding the appellees from the early-release program under 18 U.S.C. § 3621(e)(2). We therefore reverse the district court's grant of the appellees' petitions, and remand with instructions to enter judgment consistent with this opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX 2

FILED

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CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

CHRISTOPHER A. LOPEZ, Petitioner, -vs- RANDY J. DAVIS, Warden, Federal Prison Camp, FEDERAL BUREAU OF PRISONS, Respondents.	*	CIV 98-4223 MEMORANDUM OPINION AND ORDER

Introduction

Petitioner, Christopher A. Lopez, has filed a pro se habeas petition pursuant to 28 U.S.C. § 2241. Doc. 1.[1] Petitioner claims that he has been improperly classified by the Bureau of Prisons as ineligible for early release under 18 U.S.C. § 3621 (e)(2)(B). For the reasons stated below, the Court grants the petition and orders the BOP to re-evaluate Lopez for early release in accordance with this opinion.

Background

The Petitioner, Christopher A. Lopez, is currently serving a 72-month sentence for his conviction under 21 U.S.C. § 841 (a)(1) (possession with intent to distribute methamphetamine). At sentencing Lopez was assessed a two-level enhancement under the Federal Sentencing Guidelines for possession of a dangerous weapon under U.S.S.G. 2D1.1(b)(1). Petitioner argues that he should be classified as eligible for a one-year sentence reduction if he successfully completes the Residential Drug Abuse Program ("RDAP") pursuant to 18 U.S.C. § 3621 (e)(2)(B).

The Government concedes that Lopez has exhausted his administrative remedies; therefore, his claim is properly before this Court for adjudication. Doc. 6, ¶ 6.

[1]Randy J. Davis has been substituted for Al Herrera in this case as Randy J. Davis is the new Warden of the Federal Prison Camp in Yankton, South Dakota.

Discussion

As part of the Crime Control Act of 1990, Congress required the Bureau of Prisons to "make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse." 18 U.S.C. § 3621 (b). Then in 1994, to provide an incentive to federal prisoners to enroll in and complete the Bureau of Prisons' drug treatment programs, Congress authorized the Bureau to reduce by up to one year the sentences of certain prisoners under 18 U.S.C. § 3621 (e)(2)(B). This statute provides:

> (2) **Incentive for prisoners' successful completion of treatment program.** — . . .
> (B) **Period of custody.** — The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

18 U.S.C. § 3621 (e)(2)(B).

To interpret the statute, the BOP issued regulations in May 1995 defining "nonviolent offense" as the converse of crime of violence. 28 C.F.R. § 550.58 (1995). This 1995 regulation excluded from eligibility for early release under § 3621 (e)(2)(B) those inmates whose "current offense is determined to be a crime of violence as defined in 18 U.S.C. § 924 (c)(3)." 28 C.F.R. § 550.58 (1995).[2] Section 924 (c)(3) defines a crime of violence as an offense that is a felony and that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another" or "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

To implement this regulation, the BOP adopted Program Statement 5162.02, Definition of Term, "Crimes of Violence" (July 24, 1995). At paragraph 5, this program statement set out the

[2]An inmate who completes a residential drug abuse treatment program during his or her current commitment may be eligible for early release by a period not to exceed 12 months, in accordance with paragraph (a) of this section, . . . unless the inmate's current offense is determined to be a crime of violence as defined in 18 U.S.C. § 924 (c)(3), or unless the inmate has a prior felony and/or state conviction for homicide, forcible rape, robbery or aggravated assault. 28 C.F.R. § 550.58 (1995).

statutory definition of "crime of violence" found in 18 U.S.C. § 924 (c)(3). At paragraph 9, the program statement states in part:

> Convictions for an offense listed below, [including possession of a listed chemical], . . . may or may not meet the crime of violence definition by involving the use, attempted use, or threatened use of force, or by presenting a substantial risk that force might be used against the person or property of another. At the time of sentencing, the court makes a finding if the offense involved violence, and this finding is reflected in the Presentence Investigation Report section entitled "Offense Computation," under the subsection entitled "Specific Offender Characteristics." This subsection references a particular United States Sentencing Guideline that provides for an increase in the Total Offense Level if the criminal violation was committed with force.

Under this program statement, where an inmate was assessed two levels to his offense level for possession of a firearm under the Federal Sentencing Guidelines he was automatically classified as ineligible for early release, and his crime was regarded by the BOP as a crime of violence.

In Martin v. Gerlinski, 133 F.3d 1076 (8th Cir. 1998), the Eighth Circuit ruled that the BOP exceeded its authority by considering the firearm enhancement in determining a prisoner's eligibility for early release under 18 U.S.C. § 3621 (e)(2)(B). Id. at 1080-81. The court stated:

> [T]he operative word in 3621 (e)(2)(B) is 'convicted,' thus requiring the BOP to look to the offense of conviction itself to determine whether it meets the definition of a 'nonviolent offense'; § 3621 does not address sentencing or sentencing enhancement factors.

Id. at 1079. The Martin court went on to say, "[a]lthough we agree that the BOP has discretion to determine which offenses will be eligible for consideration, we cannot agree that the BOP may disregard the plain language of the statute which speaks only to those 'convicted' of a nonviolent offense." Id. at 1080.

In so holding, the Martin court rejected the reasoning of Venegas v. Henman, 126 F.3d 760, 763-65 (5th Cir. 1997), wherein the Fifth Circuit addressed whether the BOP had properly classified inmates convicted under 18 U.S.C. § 922 (g) (felon in possession of a firearm) and 21 U.S.C. § 841 (b)(1) (drug possession with intent to distribute) as ineligible for consideration for

early release under § 3621 (e)(2)(B). The Fifth Circuit held that "[t]he Bureau did not exceed its statutory authority by using its discretion to exclude from consideration for early release those prisoners convicted of possession of a weapon by a felon and offenses enhanced under the sentencing guidelines for possession of a weapon." Id. at 763. The Venegas court concluded that the operative words within section 3621 (e)(2)(B) are "may be reduced by the Bureau of Prisons," whereas the Eighth Circuit found that the statute requires the BOP to focus on the offense of conviction to establish eligibility for consideration for early release. Martin at 1080.

Prior to the Eighth Circuit's decision in Martin, on October 9, 1997, the BOP implemented the current regulations and program statement defining eligibility for the RDAP and early release. The regulatory section, 28 C.F.R. § 550.58, Considerations for Early Release, was amended to delete the reference to § 924 (c)(3) and its definition of crimes of violence. The amended regulation states, in part:

> As an exercise of the discretion vested in the Director of the Federal Bureau of prisons, the following categories of inmates are not eligible for early release: . . .
> (vi) Inmates whose current offense is a felony:
> (A) that has an element, the actual, attempted, or threatened use of physical force against the person or property of another, or
> (B) that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or
> (C) that by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or
> (D) that by its nature or conduct involves sexual abuse offenses committed upon children.

28 C.F.R. § 550.58.

Also on October 9, 1997, the BOP program statements were amended to reflect this change. A specific program statement called "Categorization of Offenses," Program Statement 5162.04, was added. Section seven lists the offenses that, in the Director's discretion, shall preclude an inmate from receiving certain BOP program benefits.[3] The list in section seven is the

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[3]Section 7 states in relevant part:

OFFENSES THAT AT THE DIRECTOR'S DISCRETION SHALL PRECLUDE AN

same as the above-quoted section of 28 C.F.R. § 550.58, Considerations for Early Release. This new program statement is applied to inmates either not participating in the RDAP as of October

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INMATE'S RECEIVING CERTAIN BUREAU PROGRAM BENEFITS. For certain Bureau programs, such as early release pursuant to 18 U.S.C. § 3621 (e) and placement in Intensive Confinement Centers, an inmate may be denied program benefits if he or she was convicted of an offense listed in either this section or section 6. If an inmate is denied the benefit of such a program, staff must carefully describe the basis for the denial. For example, if an inmate is convicted of an offense listed in this section, the inmate shall be denied a program benefit because he or she committed an offense identified at the Director's discretion, rather than a crime of violence.

As an exercise of the discretion vested in the Director, an inmate serving a sentence for an offense that falls under the provisions described below shall be precluded from receiving certain Bureau program benefits.

Inmates whose current offense is a felony that:

- has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or
- involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or
- by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or
- by its nature or conduct involves sexual abuse offenses committed upon children.

Thus, for an inmate to receive Bureau program benefits such as those mentioned above, he or she must not be convicted of an offense listed in this section or in Section 6.

b. Criminal Offense with a Specific Offense Characteristic Enhancement.

At the time of sentencing, the court makes a finding of whether the offense involved the use or threatened use of force, and this finding is reflected in the PSI section entitled "Offense Computation," subsection entitled "Specific Offense Characteristics." This subsection references a particular U.S. Sentencing Guideline that provides for an increase in the Total Offense Level if the criminal violation was committed with force.

Example: Section 841 of Title 21, United States Code makes it a crime to manufacture, distribute, or possess with the intent to distribute drugs. Under the Sentencing Guidelines (§ 2D1.1 and § 2D1.11), the defendant could receive an increase in his or her base offense level because of a "Specific Offense Characteristic" (for example, if a dangerous weapon was possessed during commission of the offense), the court would increase the defendant's base offense level by two levels. This particular "Specific Offense Characteristic" (possession of a dangerous weapon during the commission of a drug offense) poses a serious potential risk that force my be used against persons or property. Specifically, as noted in the U.S. Sentencing Guidelines § 2D1.1., application note 3, the enhancement for weapon possession reflects the increased danger of violence when drug traffickers possess weapons. Accordingly, an inmate who was convicted of manufacturing drugs, (21 U.S.C. § 841) and received a two-level enhancement for possession of a firearm has been convicted of an offense that will preclude the inmate from receiving certain Bureau program benefits.

e. Special Circumstances

- Title 18, United States Code § 922 (g). All offenses under 18 U.S.C. § 922 (g) shall preclude an inmate from receiving certain Bureau program benefits.

9, 1997 or those who had not completed the RDAP by October 9, 1997. Like the previous program statement, the new one categorically excludes inmates from eligibility for consideration based upon the assessment of a two point enhancement for weapon possession under the Federal Sentencing Guidelines.

Thus far, three Circuits have evaluated whether the BOP acted within its statutory authority in implementing the October 1997 regulation changes. The Sixth Circuit held that even though the BOP has eliminated the regulation's reliance on the meaning of "crime of violence" in § 924 (c), under the new rule, the BOP continues to deny eligibility to those prisoners who have been convicted of nonviolent offenses in violation of § 3621 (e)(2)(B). Orr v. Hawk, 156 F.3d 651 (6th Cir. 1998). The court stated that "if the BOP cannot deny eligibility for consideration for early release to anyone who has committed a nonviolent offense, it can deny eligibility only to those who have committed a crime of violence." Id. at 655. Further, "the BOP cannot reasonablely refuse to consider those convicted as felons in possession for early release under 3621 (e)(2)(B)." Id. at 656. The other appellate courts that have considered this issue are the Fourth Circuit in Pelissero v. Thompson, 155 F.3d 470 (4th Cir. 1998) and the Seventh Circuit in Bush v. Pitzer, 133 F.3d 455 (7th Cir. 1997). Both the Pelissero and Bush courts, like the Venegas court, focused on the discretion afforded the BOP rather than on the elements of the offense of conviction as required by the Martin court. For example, in Pelissero the court stated:

> Congress entrusted the decision whether to grant inmates early release under 18 U.S.C. § 3621 (e)(2)(B) "solely to the discretion and expertise of the BOP, with a cautious eye toward the public safety and welfare." Pelissero, 955 F. Supp. at 637. In exercising this discretion, the Bureau of Prisons must balance Congress's twin goals of providing an incentive for drug-addicted prisoners to undergo treatment while at the same time protecting the public from potentially violent criminals. We think that the 1997 revised version of 28 C.F.R. § 550.58 constitutes a reasonable interpretation designed to effect this objective.

Id. at 476-77 (citing Bush at 458 (upholding 1997 revised regulation on grounds that Bureau of Prisons may rationally deny early release to prisoners whose underlying conduct is violent or prone to violence)).

While it is true that the BOP may exercise a great deal of discretion in determining who among the eligible nonviolent offenders may be released, the BOP may not, in the first instance,

exclude those convicted of nonviolent offenses from early release consideration.[4] Consistent with the Eighth Circuit's opinion in Martin and the Sixth Circuit's decision in Orr, it is the holding of this Court that the BOP has exceeded its authority by interpreting 18 U.S.C. § 3621 (e)(2)(B) in a manner inconsistent with the plain language of the statute. The 1997 revised program statement does not correct the problems the Eighth Circuit found in the 1995 version because the BOP continues to rely upon factors other than whether the crime of conviction was nonviolent in making the initial determination as to whether a prisoner is eligible to be considered for early release under section 3621 (e)(2)(B). Both the former and revised program statements allow the BOP to categorically exclude inmates from consideration based upon sentencing factors or weapon possession, without regard to whether the underlying conviction was nonviolent.

At least two other district courts have held similarly. See Hicks v. Brooks, ---F. Supp.2d---, 1998 WL 817828 (D. Colo.); Gavis v. Crabtree, ---F. Supp.2d---, 1998 WL 842934 (D. Or.). In Hicks, the court explained:

> [i]n effect, the BOP has eliminated the definition of crime of violence from the 1997 revised regulation and incorporated into the revised regulation the language of the sentence enhancement for possession of a firearm, language that previously was in Program Statement 5162.02. By doing so, the BOP again has accomplished precisely what [the Tenth Circuit] said it may not, i.e., exclude categorically from consideration for early release upon completion of a drug treatment program those inmates convicted of a nonviolent offense who sentence was enhanced for possession of a weapon and, once again, convert a conviction for a nonviolent offense into a violent one by considering the sentence enhancement.

Id. at *5.

Although 18 U.S.C. § 3621 (e)(2)(B) does allow the BOP to exercise discretion to determine who, among the statutorily eligible inmates, should be granted early release, it cannot exercise its discretion to deny recognition of eligibility to those inmates statutorily eligible for consideration. In the first instance, under the language of § 3621 (e)(2)(B), Martin, and Orr, inmates convicted of nonviolent offenses must be deemed eligible for consideration for a sentence

[4]As stated by the Eighth Circuit in Martin, the Court has jurisdiction to review whether the BOP exceeded its statutory authority although the Court may not review the BOP's discretionary decision to deny a sentencing reduction. Id. at 1079 (citing Wajda v. United States, 64 F.3d 385, 388 (8th Cir. 1995) (court retains jurisdiction to determine whether Parole Commission exceeded statutory authority notwithstanding lack of jurisdiction to review substantive decision)).

reduction. The exercise of discretion requires a careful consideration of each individual case. A categorical denial of all cases within one general group without individual examination is no exercise of discretion at all.

Conclusion

Based upon the foregoing analysis, the Court grants the petition and orders the BOP to reconsider Lopez's eligibility for early release in accordance with this opinion. Accordingly,

IT IS ORDERED:

(1) that the petition filed by Christopher A. Lopez is granted.

(2) that the BOP will reconsider the eligibility of Christopher A. Lopez for early release under 18 U.S.C. § 3621 (e)(2)(B) in accordance with this opinion.

Dated this 6th day of January, 1999.

BY THE COURT:

Lawrence L. Piersol

Chief Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Sharon Soard

(SEAL) DEPUTY

APPENDIX 3

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 99-1203/1204/1205/1206/1207/1211/1212/1213/1214/1611SDSF

Calvin Bellis, et al.,

Appellees,

v.

Randa J. Davis, et al.,

Appellants.

Appeal from the United States District Court for the District of South Dakota

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 16, 1999

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX 4

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26))));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26))));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

[See main volume for text of (i)]

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

[See main volume for text of (l) and (m)]

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

APPENDIX 5

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any

such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed."; and

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

APPENDIX 9

SUBCHAPTER C—IMPRISONMENT

Sec.
3626. Appropriate remedies with respect to prison conditions.

HISTORICAL AND STATUTORY NOTES

Codification

Amendment by Pub.L. 104–134, Title I, § 101[(a)][Title VIII, § 802(c)], Apr. 26, 1996, 110 Stat. 1321–70; renumbered Title I Pub.L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1227, which directed that subchapter C analysis be amended, was executed by making amendment to item 3626 as the probable intent of Congress.

1996 Amendments

Pub.L. 104–134, Title I, § 101[(a)][Title VIII, § 802(c)], Apr. 26, 1996, 110 Stat. 1321–70; renumbered Title I Pub.L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1227, substituted "conditions" for "crowding" in item 3626. See Codification note under this section.

1994 Amendments

Pub.L. 103–322, Title XX, § 20409(c), Sept. 13, 1994, 108 Stat. 1828, added item 3626.

Pub.L. 103–322, Title XXXIII, § 330010(3), Sept. 13, 1994, 108 Stat. 2143, directed that the analysis of sections be moved to a position below the subchapter heading. The amendment served to correct a technical error in Pub.L. 98–473 which, in enacting this subchapter, had placed the analysis above the subchapter heading.

§ 3621. Imprisonment of a convicted person

[See main volume for text of (a)]

(b) Place of imprisonment.—The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

[See main volume for text of (1) to (5)]

In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status. The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another. The Bureau shall make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse.

[See main volume for text of (c) and (d)]

(e) Substance abuse treatment.—

(1) Phase-in.—In order to carry out the requirement of the last sentence of subsection (b) of this section, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall, subject to the availability of appropriations, provide residential substance abuse treatment (and make arrangements for appropriate aftercare)—

(A) for not less than 50 percent of eligible prisoners by the end of fiscal year 1995, with priority for such treatment accorded based on an eligible prisoner's proximity to release date;

(B) for not less than 75 percent of eligible prisoners by the end of fiscal year 1996, with priority for such treatment accorded based on an eligible prisoner's proximity to release date; and

(C) for all eligible prisoners by the end of fiscal year 1997 and thereafter, with priority for such treatment accorded based on an eligible prisoner's proximity to release date.

(2) Incentive for prisoners' successful completion of treatment program.—

(A) Generally.—Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provided under paragraph (1) of this subsection, shall remain in the custody of the Bureau under such conditions as the Bureau

deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for substance abuse and discontinue such conditions on determining that substance abuse has recurred.

(B) Period of custody.—The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

(3) Report.—The Bureau of Prisons shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives on January 1, 1995, and on January 1 of each year thereafter, a report. Such report shall contain—

(A) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau;

(B) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible; and

(C) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this title.

(4) Authorization of appropriations.—There are authorized to be appropriated to carry out this subsection—

(A) $13,500,000 for fiscal year 1996;

(B) $18,900,000 for fiscal year 1997;

(C) $25,200,000 for fiscal year 1998;

(D) $27,000,000 for fiscal year 1999; and

(E) $27,900,000 for fiscal year 2000.

(5) Definitions.—As used in this subsection—

(A) the term "residential substance abuse treatment" means a course of individual and group activities, lasting between 6 and 12 months, in residential treatment facilities set apart from the general prison population—

(i) directed at the substance abuse problems of the prisoner; and

(ii) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems;

(B) the term "eligible prisoner" means a prisoner who is—

(i) determined by the Bureau of Prisons to have a substance abuse problem; and

(ii) willing to participate in a residential substance abuse treatment program; and

(C) the term "aftercare" means placement, case management and monitoring of the participant in a community-based substance abuse treatment program when the participant leaves the custody of the Bureau of Prisons.

(6) Coordination of Federal assistance.—The Bureau of Prisons shall consult with the Department of Health and Human Services concerning substance abuse treatment and related services and the incorporation of applicable components of existing comprehensive approaches including relapse prevention and aftercare services.

(As amended Pub.L. 101–647, Title XXIX, § 2903, Nov. 29, 1990, 104 Stat. 4913; Pub.L. 103–322, Title II, § 20401, Title III, § 32001, Sept. 13, 1994, 108 Stat. 1824, 1896.)

HISTORICAL AND STATUTORY NOTES

1994 Amendments

Subsec. (b). Pub.L. 103–322, § 32001(1), deleted ", to the extent practicable," following "The Bureau shall" in the second sentence of the provisions following par. (5).

Pub.L. 103–322, § 20401, inserted at the end of the provisions following par. (5) the following new sentence: "In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status."

Subsec. (e). Pub.L. 103–322, § 32001(2), added subsec. (e).

1990 Amendment

Subsec. (b). Pub.L. 101–647 added provision respecting drug treatment for prisoners.

APPENDIX 7

Withdrawal/expulsion. (1) An in-
may withdraw voluntarily from
gram.
he drug abuse treatment coordi-
nay remove an inmate from the
m based upon disruptive behav-
ted to the program. Ordinarily,
hall provide the inmate with at
ne warning prior to removal. An
may not ordinarily be removed
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found by the DHO to have:
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been violent or threatened vio-
gainst staff or another inmate;

Committed a 100 level prohibited

ithdrawal or removal from the
tial program may result in the
's being returned to his/her prior
ion (when the inmate had been
ally transferred for the purpose
am participation).

984, May 25, 1995]

**Incentives for residential drug
e treatment program participa-**

inmate may receive incentives
or her satisfactory involvement
residential program. These in-
may include, but are not lim-
the following.
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e inmate's achievement/com-
of program phases.
nsideration for the maximum
f time (currently 180 days) in a
nity Corrections Center place-
rovided the inmate is otherwise
for this designation.
cal institution incentives such
red living quarters or special
ion privileges.
ligible under §550.58, consider-
early release.
inmate must meet his/her fi-
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drawal or removal from the
al program may result in the
entives previously achieved.

, May 25, 1995]

§550.58 Consideration for early release.

Except as provided in this paragraph, an inmate who was sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. chapter 227, subchapter D, and who completes a residential drug abuse treatment program including subsequent transitional services in a community-based program (i.e., in a Community Corrections Center or on home confinement) during his or her current commitment may be eligible, in accordance with paragraph (a) of this section, for early release by a period not to exceed 12 months. The following categories of inmates are not eligible: INS detainees, pretrial inmates, contractual boarders (for example, D.C., State, or military inmates), inmates whose current offense is determined to be a crime of violence as defined in 18 U.S.C. 924(c)(3), inmates who have a prior conviction for homicide, forcible rape, robbery, or aggravated assault, and inmates who are not eligible for participation in a community-based program as determined by the Warden on the basis of his or her professional discretion.

(a) *Eligibility.* (1) An inmate who had successfully completed a Bureau of Prisons residential drug abuse treatment program before October 1, 1989 is otherwise eligible if:

(i) Staff confirm that the completed program matches the treatment required by statute;

(ii) The inmate signs an agreement acknowledging his/her program responsibility;

(iii) The inmate completes a refresher treatment program and all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and

(iv) Since completion of the program, the inmate has not been found to have committed a 100 level prohibited act and has not been found to have committed a prohibited act involving alcohol or drugs.

(2) An inmate who has successfully completed a Bureau of Prisons residential drug abuse treatment program on or after October 1, 1989 is otherwise eligible if:

(i) The inmate completes all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and

(ii) Since completion of the program, the inmate has not been found to have committed a 100 level prohibited act and has not been found to have committed a prohibited act involving alcohol or drugs.

(b) *Application*—(1) *Inmates currently enrolled.* Eligible inmates currently enrolled in a residential drug abuse treatment program shall automatically be considered for early release.

(2) *Inmates who had previously completed program requirements.* Eligible inmates who have previously completed a residential drug abuse treatment program (or which matches the treatment required by statute) must notify the institution's drug abuse program coordinator via a Request to Staff in order to be considered for early release.

(c) *Length of reduction.* (1) Except as specified in paragraphs (c)(2) and (3) of this section, an inmate who is approved for early release may receive a reduction of up to 12 months.

(2) If the inmate has less than 12 months to serve after completion of all required transitional services, the amount of reduction may not exceed the amount of time left on service of sentence.

(3) If, based upon a disciplinary finding or based on program needs (for example, the inmate has not established an adequate release plan), the Community Corrections Regional Administrator may retard or disallow any portion of the maximum 12 months for an inmate in a community-based program.

[60 FR 27685, May 25, 1995, as amended at 61 FR 25122, May 17, 1996]

§550.59 Transitional drug treatment services.

Transitional treatment programming is required for all inmates completing an institution's residential treatment program. Transitional treatment includes treatment provided to inmates who, upon completing the residential program, return to the general population of that or another institution or who are transferred to a community-based program. An inmate's refusal to

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APPENDIX 8

(a) *Eligibility.* An inmate must meet all of the following criteria to be eligible for the residential drug abuse treatment program.

(1) The inmate must have a verifiable documented drug abuse problem.

(2) The inmate must have no serious mental impairment which would substantially interfere with or preclude full participation in the program.

(3) The inmate must sign an agreement acknowledging his/her program responsibility.

(4) Ordinarily, the inmate must be within thirty-six months of release.

(5) The security level of the residential program institution must be appropriate for the inmate.

(b) *Application/Referral/Placement.* Participation in the residential drug abuse treatment program is voluntary. An inmate may be referred for treatment by unit or drug treatment staff or apply for the program by submitting a request to a staff member (ordinarily, a member of the inmate's unit team or the drug abuse treatment coordinator). The decision on placement is made by the drug abuse treatment coordinator.

(c) *Completion.* Completion of the residential drug abuse treatment program requires attendance and participation in scheduled individual and group activities and a passing grade on examinations covering each separate subject module of the program. An inmate who fails an examination on any subject module ordinarily shall be allowed to retest one time. A certificate of achievement will be awarded to all who successfully complete the program. A copy of this certificate will be forwarded to the unit team for placement in the inmate's central file.

(d) *Withdrawal/expulsion.* (1) An inmate may withdraw voluntarily from the program.

(2) The drug abuse treatment coordinator may remove an inmate from the program based upon disruptive behavior related to the program. Ordinarily, staff shall provide the inmate with at least one warning prior to removal. An inmate may not ordinarily be removed immediately without warning unless the inmate, pursuant to an incident report, is found by the DHO to have:

(i) Used or possessed alcohol or drugs;

(ii) Been violent or threatened violence against staff or another inmate; or

(iii) Committed a 100 level prohibited act.

(3) Withdrawal or removal from the residential program may result in the inmate's being returned to his/her prior institution (when the inmate had been specifically transferred for the purpose of program participation).

[60 FR 27694, May 25, 1995]

§ 550.57 Incentives for residential drug abuse treatment program participation.

(a) An inmate may receive incentives for his or her satisfactory involvement in the residential program. These incentives may include, but are not limited to, the following.

(1) Limited financial awards, based upon the inmate's achievement/completion of program phases.

(2) Consideration for the maximum period of time (currently 180 days) in a Community Corrections Center placement, provided the inmate is otherwise eligible for this designation.

(3) Local institution incentives such as preferred living quarters or special recognition privileges.

(4) If eligible under § 550.58, consideration for early release.

(b) An inmate must meet his/her financial program responsibility obligations (see 28 CFR part 545) prior to being able to receive an incentive for his/her residential program participation.

(c) Withdrawal or removal from the residential program may result in the loss of incentives previously achieved.

[60 FR 27694, May 25, 1995]

§ 550.58 Consideration for early release.

An inmate who was sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense, and who is determined to have a substance abuse problem, and successfully completes a residential drug abuse treatment program during his or her current commitment may be eligible, in accordance with paragraph (a) of this section, for early release by a period not to exceed 12 months.

(a) *Additional early release criteria.* (1) As an exercise of the discretion vested in the Director of the Federal Bureau of Prisons, the following categories of inmates are not eligible for early release:

(i) INS detainees;

(ii) Pretrial inmates;

(iii) Contractual boarders (for example, D.C., State, or military inmates);

(iv) Inmates who have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, or aggravated assault, or child sexual abuse offenses;

(v) Inmates who are not eligible for participation in a community-based program as determined by the Warden on the basis of his or her professional discretion;

(vi) Inmates whose current offense is a felony:

(A) That has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or

(B) That involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(C) That by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(D) That by its nature or conduct involves sexual abuse offenses committed upon children.

(2) An inmate who had successfully completed a Bureau of Prisons residential drug abuse treatment program before October 1, 1989 is otherwise eligible if:

(i) Staff confirm that the completed program matches the treatment required by statute;

(ii) The inmate signs an agreement acknowledging his/her program responsibility;

(iii) The inmate completes a refresher treatment program and all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and

(iv) Since completion of the program, the inmate has not been found to have committed a 100 level prohibited act and has not been found to have committed a prohibited act involving alcohol or drugs.

(3) An inmate who has successfully completed a Bureau of Prisons residential drug abuse treatment program on or after October 1, 1989 is otherwise eligible if:

(i) The inmate completes all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and

(ii) Since completion of the program, the inmate has not been found to have committed a 100 level prohibited act and has not been found to have committed a prohibited act involving alcohol or drugs.

(b) *Application*—(1) *Inmates currently enrolled.* Eligible inmates currently enrolled in a residential drug abuse treatment program shall automatically be considered for early release.

(2) *Inmates who had previously completed program requirements.* Eligible inmates who have previously completed a residential drug abuse treatment program (or which matches the treatment required by statute) must notify the institution's drug abuse program coordinator via a Request to Staff in order to be considered for early release.

(c) *Length of reduction.* (1) Except as specified in paragraphs (c)(2) and (3) of this section, an inmate who is approved for early release may receive a reduction of up to 12 months.

(2) If the inmate has less than 12 months to serve after completion of all required transitional services, the amount of reduction may not exceed the amount of time left on service of sentence.

(3) If the inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the presumptive release date by the minimum amount of time necessary to allow for fulfillment of the treatment obligations.

[60 FR 27695, May 25, 1995, as amended at 61 FR 25122, May 17, 1996; 62 FR 53081, Oct. 15, 1997]

APPENDIX 9

OPI: OGC
NUMBER: 5162.02
DATE: July 24, 1995
SUBJECT: Definition of Term, "Crimes of Violence"

1. PURPOSE AND SCOPE. To implement various portions of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) that make reference to "nonviolent offense," and "crime of violence," specifically, Section 20417, Notification of Release of Prisoners, Section 20405, Crediting of "Good Time," and Section 32001, Substance Abuse Treatment in Federal Prisons. This Program Statement defines "crime of violence" as that term is used in these sections of the VCCLEA. The definition includes broad statutory language, as well as a framework for determining which specific criminal offenses fall within the statutory definition.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. An inmate whose offense is a crime of violence will have that status reflected in his or her record and be subject to the limitations imposed by that status.

b. Case management staff will review relevant documents to determine whether an inmate has committed a crime of violence.

3. DIRECTIVES REFERENCED

P.S. 5322.09 Classification and Program Review of Inmates (03/10/94)
P.S. 5330.10 Drug Abuse Programs Manual, Inmate (05/25/95)
P.S. 5800.07 Inmate Systems Management Manual (12/24/91)
P.S. 5800.08 Receiving and Discharge Manual (06/15/93)
P.S. 5880.28 Sentence Computation Manual (CCCA of 1984) (02/21/92)
P.S. 5880.30 Sentence Computation Manual (Old Law, Pre-CCCA of 1984) (07/16/93)

4. STANDARDS REFERENCED. None.

5. STATUTORY DEFINITION. Title 18 of the United States Code defines "crime of violence" in Section 924(c)(3) as follows:

" The term 'crime of violence' means an offense that is a felony and--

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

6. CRIMINAL PROVISIONS OF THE UNITED STATES CODE. Criminal offenses are defined in many different titles of the United States Code including Titles 7, 16, 18, 21, 26, 29, 30, and 46. The

offenses contained within these titles that may be crimes of violence are listed in the various sections below. If a particular code section in these titles is not listed below, and case management staff believe that the crime might be violent, they should contact Regional Counsel. Additionally, if a Judgment and Commitment Order references a United States Code section that is not found in Titles 7, 16, 18, 21, 26, 30, 42, or 49, please contact Regional Counsel to determine whether the particular offense should be categorized as a "crime of violence."

Some of the Code sections may be listed in more than one section below; this duplication is indicated by an asterisk. In such cases, staff should check subsequent sections of the Program Statement to determine whether the offense is a "crime of violence."

7. CRIMINAL OFFENSES THAT ARE CRIMES OF VIOLENCE IN ALL CASES. Any conviction for an offense listed below should be categorized as a "crime of violence."

a. Title 18, United State Code Sections

§ 32 (destruction of aircraft)
§ 34 (penalty when death results)
§ 35(b) (conveying false information that harms human life)
§ 36 VCCLEA addition (firing weapons into group of persons)
§ 37 VCCLEA addition (violence at international airports)
§ 43(b) (animal enterprise terrorism causing death or injury)
§ 81 (arson w/in maritime jurisdiction)
§ 111 (assaulting officers of the United States)
§ 112(a) (assaulting foreign officials)

§ 113 (assaults w/in maritime jurisdictions)
§ 114 (maiming w/in maritime jurisdiction)
§ 115 (threatening family member of a federal official)
§ 175 (biological weapons)
§ 231 (civil disorders)
§ 245 (federally protected activities)
§ 247(a)(1) (damage to religious property/obstruction of exercise of religion)
§ 247(a)(2) (obstruction of persons in free exercise of religion)
§ 351 (assassination of cabinet and congress members)
§ 373 (soliciting to commit a violent act)
§ 753 (rescue of an inmate to prevent execution)
* § 842 (explosive materials) *
§ 844 (penalties)
§ 871 (threats against the President)
§ 875(a),(b),(c) (interstate communications)
§ 878 (threats against foreign officials)
§ 879 (threats against former presidents)
* § 922(a)(4), (a)(7), (a)(8), (b)(4), (b)(5), * (d)(1), (d)(2), (d)(4), (d)(8), (g),(o),(p) (firearms violations)
§ 924(c) (firearms used in violent or drug trafficking crimes)

§ 930(b) & (c) (possession of firearms in federal facilities)
§ 970(a) (damage of property owned by foreign governments)
§ 1091 (genocide)
§ 1111 (murder)
§ 1112 (manslaughter)
§ 1113 (attempt to commit murder or manslaughter)
§ 1114 (murder of officers)
§ 1116 (murder of foreign officials)
§ 1117 (conspiracy to murder)
§ 1118 VCCLEA addition (murder in correctional institution)
§ 1119 VCCLEA addition (foreign murder of US national)
§ 1120 VCCLEA addition (murder by escaped prisoner)
§ 1121 VCCLEA addition (murder by state or local officer)
§ 1201 (kidnapping)
§ 1203 (hostage taking)
§ 1204 (international parental kidnapping)
§ 1364 (interference by foreign commerce by violence)
§ 1365 (tampering with consumer products) except 1365(b),(c)
§ 1512(a) (killing witness or victim)
§ 1513 (retaliation against witness or victim)
§ 1581 (peonage)

§ 1583 (enticement into slavery)
§ 1584 (sale into servitude)
§ 1585 (slave trading)
§ 1587 (possession of slaves aboard a vessel)
§ 1588 (transporting slaves)
§ 1651 (piracy)
§ 1652 (citizens as pirates)
§ 1653 (aliens as pirates)
§ 1655 (assault on commander as pirates)
§ 1659 (attack to plunder a vessel)
§ 1661 (robbery ashore)
§ 1751 (assassination of president or staff)
§ 1792 (mutiny or riot)
§ 1859 (surveys interrupted)
§ 1864 (hazardous devices on federal lands)
§ 1958 (use of interstate commerce in murder for hire)
§ 1959 (violent crimes aiding racketeering)
§ 1991 (entering train to commit crime)
§ 1992 (wrecking trains)
§ 2101 (riots)
§ 2111 (special maritime jurisdiction)
§ 2113(d),(e) (bank robbery and incidental crimes)
§ 2114 (assault of person carrying mail)
§ 2115 (breaking into post office)

§ 2118(a),(b),(c) (robberies and burglaries involving controlled substances)
§ 2119 (crimes involving motor vehicles)
§ 2191 (cruelty to seamen)
§ 2231(b) (assault or resistance)
§ 2232(a) (destruction of property to prevent seizure)
§ 2233 (rescue of seized property)
§ 2241 (aggravated sexual abuse)
§ 2242 (sexual abuse)
§ 2244(a) (abusive sexual contact)
§ 2261 VCCLEA addition (interstate domestic violence)
§ 2275 (firing or tampering with vessels)
§ 2276 (breaking and entering vessels)
§ 2280 VCCLEA addition (violence against maritime navigation)
§ 2281(NOT (A)), VCCLEA addition (violence against fixed platforms)
§ 2332 (penalties for homicide)
§ 2332a VCCLEA addition (use of weapons of mass destruction)
§ 2340A (torture)
§ 2383 (rebellion or insurrection)
§ 2384 (sedition conspiracy)
§ 2385 (advocating the overthrow of the government)
§ 2389 (recruiting for service against U.S.)
§ 2390 (enlistment to serve against U.S.)

§ 2421 (transportation for illegal sexual activity)
§ 2422 (coercion into interstate travel for illegal sexual activity)
§ 2423 (transportation of minors for illegal sexual activity)

b. Title 21 United States Code Sections

* § 841(e) (boobytraps on federal property) *
§ 848(e) (death penalty for criminal offenses)
§ 858 (endangering human life while manufacturing controlled substances)

* c. Title 26 United States Code Sections *

§ 5861(a)-(l) (firearms)

d. Title 42 United States Code Sections

§ 2283(a) (protection of nuclear inspectors)
§ 2284(a) (sabotage of nuclear facilities)
§ 3631 (interference with housing)

e. Title 49 United States Code Sections

§ 46502 (aircraft piracy)

§ 46504 (interference with flight crew members)
§ 46505(c) (carrying a weapon on an aircraft)
§ 46507 (false information and threats)

8. CRIMINAL OFFENSES THAT MAY BE CRIMES OF VIOLENCE DEPENDING ON THE BASE OFFENSE LEVEL ASSIGNED. Convictions for an offense listed below may or may not have involved the use, attempted use, or threat of force, or presented the substantial risk that force might be used against the person or property of another. At the time of sentencing, the court makes a finding if an offense listed below involved violence, and this finding is reflected in the Presentence Investigation Report section entitled "Offense Computation," subsection entitled "Base Offense Level." This subsection references a particular United States Sentencing Guideline provision that distinguishes between violations of the particular criminal code section that are committed with and without force.

Example: Title 18 United States Code Section 241, Conspiracy Against Rights provides:

If two or more persons conspire to injure, oppress, threaten or intimidate any inhabitant . . .

. in the free exercise or enjoyment of any right or privilege . . . .

This crime could be committed through the use of force or threat of use of force, or not, since one can be oppressed through means other than force. Pursuant to United States Sentencing Guideline Section 2H2.1, if the crime involved obstructing an election or registration and the obstruction occurred using force or threat of force against persons or property, the base offense level is 18. If the obstruction occurred through non-violent means, such as forgery, fraud, theft, deceit, etc., the base offense level is 12. If an offender was convicted of an offense listed below, case management staff must examine the base offense level to determine whether the offense was a crime of violence. If the Presentence Investigation Report does not include an explanation as to the reason for assigning a particular base offense level, case management staff may need to examine the particular Sentencing Guideline referenced.

Some of the offenses listed below may correspond to more than one Sentencing Guideline, only one of which includes a base level adjustment for violence. Accordingly, it is possible that an examination of the Offense Computation section of the Presentence Investigation Report may reveal no mention of violence. When the Presentence Investigation Report fails to explain the reason for assigning a particular base offense level, case management staff must examine the particular Sentencing Guideline referenced to determine whether the court found that the use of force was implicated in the offense.

A list of offenses for which the Sentencing Guidelines base offense level is affected by the presence of violence follows:

Title 18 United States Code Sections

§ 33 (destruction of motor vehicles or facilities)
§ 241 FOR OTHER THAN CONSPIRACY (conspiracy against rights)
§ 242 (deprivation of rights under color of law)
§ 592 (putting troops at polls)

§ 593 (interference by armed forces)
§ 1791 (possessing contraband in prison)
§ 1952 (transporting items in aid of racketeering)
§ *2116 (railway or steamboat post office)
§ 2231(a) (assault on persons executing search warrant)
§ 2381 (treason)

9. CRIMINAL OFFENSES THAT MAY BE CRIMES OF VIOLENCE DEPENDING ON THE SPECIFIC OFFENSE CHARACTERISTIC ASSIGNED. Convictions for an offense listed below, like those listed in Section 8 above, may

or may not meet the crime of violence definition by involving the use, attempted use, or threatened use of force, or by presenting a substantial risk that force might be used against the person or property of another. At the time of sentencing, the court makes a finding if the offense involved violence, and this finding is reflected in the Presentence Investigation Report section entitled "Offense Computation," under the subsection entitled "Specific Offense Characteristics." This subsection references a particular United States Sentencing Guideline that provides for an increase in the Total Offense Level if the criminal violation was committed with force.

* Example: Section 841 of Title 21 United States Code makes it a* crime to manufacture, distribute, or possess with the intent to distribute drugs. Under the Sentencing Guidelines (§ 2D1.1 and § 2D1.11) the defendant could receive an increase in his or her base offense level because of a "Specific Offense Characteristic," e.g., if a dangerous weapon was possessed during commission of the offense, the court would increase the defendant's base offense level by 2 levels. This particular "Specific Offense Characteristic" (possession of a dangerous weapon during the commission of a drug offense) poses a substantial risk that force may be used against persons or property. Accordingly, a defendant who has received a conviction for manufacturing drugs (21 U.S.C. § 841), and receives a two level enhancement for possession of a firearm has been convicted* of a "crime of violence." *

Some of the offenses listed below may correspond to more than one Sentencing Guideline, only one of which includes a Specific Offense Characteristic for violence. Alternatively, the Presentence Investigation Report may fail to adequately describe the Specific Offense Characteristic that underlies the increase in offense level. In either case, it is possible that an examination of the Offense Computation section of the Presentence Investigation Report reveals no mention of violence. If this occurs, case management staff must examine the particular Sentencing Guideline referenced to determine whether the court found that the use of force was implicated in the offense.

Example: The Presentence Investigation Report in the above scenario may state "SOC (specific offense characteristic) 2F1.1(4) increase 2 levels." If the Report does not further state "since the offense involved the conscious or reckless risk of serious bodily injury, increase by two levels pursuant to 2F1.1(4)," the case management staff may have to examine Guideline 2F1.1(4) to determine that the only basis for this particular increase is a finding that the offense included the risk of bodily injury.

Case management staff may contact Regional Counsel if they have questions regarding this section. Below is a list of offenses for which there could be a Specific Offense Characteristic enhancement for the use of violence:

a. Title 16 United States Code Sections

§ 773e(a)(2),(3),(4),(6) (violation of Northern Pacific Halibut Act)
§ 773g (violation of Northern Pacific Halibut Act)
§ 1857(a)(D),(E),(F),(H) (violation of National Fishery Management Program)
§ 1859 (violation of National Fishery Management Program)
§ 2435(4),(5),(6),(7) (violation of Antarctic Marine Living Resources Convention)
§ 2438 (violation of Antarctic Marine Living Resources Convention)
§ 3606 (violation of North Atlantic Salmon Fishing)
§ 3637(a)(2),(3),(4),(6),(c) (violation of Pacific Salmon Fishing)
§ 5009(5),(6),(7),(8) (violation of North Pacific Anadromous Stock Convention)
§ 5010(b) (violation of North Pacific Anadromous Stock Convention)

b. Title 18 United States Code Sections

§ 755 (officer permitting escape)
§ 757 (procures escape for prisoner of war)
§ 874 (kickbacks from public works employees)
§ 894 (extending credit through extortionate means)
§ 1163 (embezzlement/theft from Indian organizations)
§ 1503 (influencing or injuring officer or juror)
§ 1505 (obstruction of proceedings before departments or agencies)
§ 1511 (obstruction of state or local law enforcement)
§ 1516 (obstruction of a federal audit)
§ 1517 (obstructing financial examination)
§ 1951 (interference with commerce by threats or violence)
§ 2112 (robbery of personal property of United States)
§ *2116 (breaking into a mail car)

c. Title 21 United States Code Sections

§ 841(NOT (e)), (controlled substance violation)
§ *846 (attempt and conspiracy)

d. Title 26 United States Code Sections

§ 7212 (attempt to interfere with revenue laws)
§ 7214 (unlawful acts by employees of the IRS)

e. Title 30 United States Code Sections

§ 1461(a)(3),(4),(5),(7) (resisting officers for violations under Deep Seabed Mineral Resources Act)
§ 1463 (violations of Deep Seabed Mineral Resources Act)

f. Title 33 United States Code Section

§ 1232(b)(2) (ports and waterways safety enforcement provisions)

g. Title 40 United States Code Section

§ 193f(a) (security of Capitol grounds and buildings)

h. Title 42 United States Code Sections

§ 1973aa (application of prohibition to other States)
§ 1973aa-1 (residence requirements for voting)
§ 1973aa-1a (bilingual election requirements)
§ 1973aa-3 (penalty)
§ 1973bb (enforcement of twenty-sixth amendment)
§ 1973gg-10 (criminal penalties)
§ 2283(b) (protection of nuclear inspectors)
§ 19151(2),(3),(4),(5) (violation of Ocean Thermal Energy Conversion Act)
§ 9152(d) (violation of Ocean Thermal Energy Conversion Act)

i. Title 46 United States Code Section

§ 1903 (Manufacture, Distribution, or possession with intent to manufacture controlled substances)

j. Title 49 United States Code Section

§ 46505(b) (carrying a weapon on an aircraft)

10. CRIMINAL OFFENSES THAT MAY BE CRIMES OF VIOLENCE DEPENDING ON A VARIETY OF FACTORS. In addition to the two lists in Sections 8 and 9 above, there are several more code sections that can be violated with or without force. For the crimes listed below, the Sentencing Guidelines provide little insight into the court's findings on this issue. Accordingly, rather than simply examining the base offense level or the specific

offense characteristics, case managers must carefully examine the entire Offense Computation section of the Presentence Investigation Report, and, if necessary, the Offense Conduct section, to determine whether the offense was violent.

For the sections listed below, staff should look carefully to see if the offense was committed through the use or threatened use of force against a person or property, or whether commission of the offense involved a substantial risk that force would be used against a person or property.

* Some of the statutes listed in this section cover conspiracy* offenses, (see, e.g., 18 U.S.C. § 371 and 21 U.S.C. § 846) where an individual has planned with others to commit a particular crime. Other listed statutes cover attempt offenses (see, e.g., 21 U.S.C. §§ 846 and 963) where an individual tried but did not succeed in committing a particular crime. In order to determine whether one these offenses is violent, it is necessary to examine the "underlying offense" (what the defendant was conspiring to do or attempting to do). If the underlying offense would be classified as violent pursuant to the provisions of this program statement, e.g., murder, then the attempt or the conspiracy offense is also violent. The underlying offense may be noted on the Judgment and Commitment Order and will certainly be included in the Presentence Investigation Report.

Example: The Judgment and Commitment Order may indicate a conviction for "Attempt and Conspiracy)" (21 U.S.C. § 846). The accompanying Presentence Investigation Report will reference the underlying crime, in many cases it will be "Possession with Intent to Distribute a Controlled Substance" (21 U.S.C. § 841). Staff should then review the underlying offense (in this case possession of controlled substance) using the categories in this program statement. As noted in the example on Section 9, if the Presentence Report indicates that the defendant received a 2 level increase for possessing a dangerous weapon ("Specific Offense Characteristic" for guideline § 2D1.1 or 2D1.11 applicable to 21 U.S.C. § 841 violations), then the offense should be deemed violent; if no such enhancement was given, the offense should be deemed nonviolent.

There are some statutes that do not criminalize behavior, but rather set out penalties that will result from violating other statutes.

Example: 18 U.S.C. § 924(a)(1)(B) provides that whoever "knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922 . . . shall be fined under

this title, imprisoned not more than five years, or both."

The Judgment and Commitment Order may indicate the sentence was imposed pursuant to the penalty provisions of § 924(a)(1)(B) without indicating the conviction for the underlying offense. The PSI, however, will note the underlying conviction, e.g., "Transporting a Destructive Device in Interstate Commerce" (18 U.S.C. § 922(a)(4)). In order to determine whether the offender's current offense is violent, staff should assess whether the underlying offense is violent in accordance with the provisions of this policy; if the underlying offense is violent, then the offender * should be deemed violent. *

Below is a list of offenses that may be violent depending on a variety of factors.

a. Title 7 United States Code Section

§ 473c-1 (offenses in relation to sampling of cotton)

b. Title 16 United States Code Sections

§ 5106(e)(5),(6),(7),(9),(f)(2) (violation of Atlantic Coast Fisheries Cooperative Management)

c. Title 18 United States Code Sections

§ 241 if conspiracy (conspiracy to deprive of civil rights)
§ 371 (conspiracy to commit offense or fraud against United States)
§ 372 (conspiracy to impede or inure officer)
§ 700 (desecration of the flag of the United States)
§ 751 (escape from federal prison)
§ 752 (instigating or assisting escape from federal prison)
§ 831 (prohibited acts involving nuclear materials)
§ 876 (mailing threatening communications)
§ 877 (mailing threatening communications from foreign country)
§ 924 (penalties for firearms violations)
§ 1153 (offenses within Indian Country)
§ 1512(b) (tampering with a witness/victim/informant)
§ 1708 (theft or receipt of stolen mail)
§ 1792 (mutiny and riot in prison)
§ 1956 (money laundering)
§ 1962 (racketeering)
§ 2117 (breaking into carrier facilities)
§ 2118(d) (robberies involving controlled substances)

§ 2152 (destruction of submarine and torpedo works)
§ 2153 (destruction of war materials)
§ 2154 (production of defective war material)
§ 2155 (destruction of national defense materials)
§ 2156 (production of defective national defense material)
§ 2192 (incitation of seamen to revolt)
§ 2193 (mutiny)
§ 2247 (repeat offenders)
§ 2387 (activities involving armed forces)

d. Title 21 United States Code Sections

§ *846 (attempt and conspiracy)
§ 848 (controlled substances violations as criminal enterprise)
§ 963 (conspiracy or attempt to violate controlled substance laws)

e. Title 40 United States Code Sections

§ 193f(a),(b) (security of Capitol grounds and buildings)

f. Title 42 United States Code Section

§ 2000(e)(13) (killing of officer while enforcing Equal Employment Act)

11. TITLE 18 UNITED STATES CODE SECTION 2113(a).

Title 18 United States Code Section 2113(a) provides in pertinent part:

Whoever, by force and violence, or by intimidation, takes or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association, . . . shall be fined under this title or imprisoned not more than twenty years, or both.

This statute covers various offenses, including not only bank robbery, but embezzling bank funds, stealing bank property and bank larceny.

With regard to the specific crime of bank robbery, the offense should be considered a crime of violence pursuant to section 924(c)(3) since, due to the circumstances surrounding bank robberies, the offense involves an explicit or implicit threat of force and thus has as an element the "threatened use of physical force against the person or property of another."

However, as to other offenses covered by 18 U.S.C. § 2113(a), (e.g. bank larceny), similar to offenses in Section 9, defendants may receive a Specific Offense Characteristic enhancement that will result in an increase in the base offense level. Such enhancements provide for an increase in the defendant's base offense level if a firearm was discharged, if a firearm or other dangerous weapon was brandished, displayed, possessed or used or if an express or implied threat of death was made (U.S.S.G. 2B3.2(b), Application Notes 2 and 6). If a defendant received such an enhancement (or one of the other enhancements involving violence), the crime should be deemed "violent."

12. OFFENSES COMMITTED BEFORE NOVEMBER 1, 1987. The Sentencing Guidelines are, generally, not applicable for offenses committed before November 1, 1987. Accordingly, for offenses identified in sections 8 through 10 above that were committed before this date, case managers must make their own determination, based on the narrative description of the crime contained in the Presentence Investigation Report, whether the crime has as an element the use of force or threat of force, or the offense, by its nature, posed a substantial risk that force would be used (see definition in 18 U.S.C. § 924(c)(3) quoted above).

13. CRIMES CODIFIED PURSUANT TO THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994. The VCCLEA created a number of new Federal criminal offenses and enhanced penalties for several existing offenses. Some of the new offenses are included in the above lists, but the lists will be revised as needed after the United States Sentencing Commission drafts new guidelines. The above lists will be updated periodically to reflect legislative changes.

\s\
Kathleen M. Hawk
Director

APPENDIX 10

U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: OGC
NUMBER: 5162.04
DATE: October 9, 1997
SUBJECT: Categorization of Offenses

1. PURPOSE AND SCOPE. To assist in the implementation of various Federal Bureau of Prisons policies and programs. Section 6 of this Program Statement lists offenses the Bureau categorizes as crimes of violence as that term is used in various statutes. In addition, Section 7 lists offenses that in the Director's discretion shall preclude an inmate's receiving certain Bureau program benefits.

2. PROGRAM OBJECTIVE. The expected result of this program is: An inmate will be denied the benefits of certain programs if his or her offense is either a crime of violence or an offense identified at the discretion of the Director of the Bureau of Prisons.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

OM 149-96 (5162)	Release Procedures for Inmates Eligible for Sentence Reduction Under 18 U.S.C. § 3621(e) in the Ninth Circuit (12/24/96)

b. Directives Referenced

PS 5110.11	Notification of Release to State and Local Law Enforcement Officials (10/31/95)
PS 5162.02	Definition of Term, Crimes of Violence (7/24/95)

PS 5322.09	Classification and Program Review of Inmates (3/10/94)
PS 5330.10	Drug Abuse Programs Manual, Inmate (5/25/95)
PS 5390.07	Intensive Confinement Center Program (4/24/96)
PS 5800.07	Inmate Systems Management Manual (12/24/91)
PS 5800.08	Receiving and Discharge Manual (6/15/93)
PS 5880.28	Sentence Computation Manual (CCCA of 1984) (2/21/92)
PS 5880.30	Sentence Computation Manual (Old Law, Pre-CCCA of 1984) (7/16/93)

4. STANDARDS REFERENCED. None.

5. APPLICATION. Criminal offenses are defined in many different titles of the United States Code including Titles 7, 16, 18, 21, 26, 29, 30, and 46. The offenses contained in these titles that may be crimes of violence are listed in Section 6. Section 7 lists offenses that are not categorized as crimes of violence, but would nevertheless preclude an inmate's receiving certain Bureau program benefits at the Director's discretion.

Some Bureau policies or programs require a determination that an inmate committed a crime of violence, for example, the Program Statement on Inmate Discipline and Special Housing Units. Other policies or programs, such as early release pursuant to 18 U.S.C. § 3621(e) and placement in Intensive Confinement Centers, indicate that an inmate may be denied the benefits of such programs if he or she was convicted of an offense listed in either Section 6 or 7. When an inmate may be denied a program benefit under either Section 6 or 7, staff must carefully explain the basis for the denial. For example, if an inmate is convicted of an offense listed in Section 7, the inmate should be denied a program benefit because he or she committed an offense identified at the Director's discretion, rather than a crime of violence.

If a particular Code section in these titles is not listed in Section 6 or Section 7, and case management staff believe the crime might be violent, or might preclude an inmate's receiving certain Bureau program benefits, they shall contact legal staff at the institution or the Regional Counsel. Also, if a Judgment and Commitment Order (J&C) references a United States Code section that is not found in Titles 7, 16, 18, 21, 26, 30, 42, or 49, they should contact legal staff at the institution or the

Regional Counsel to determine whether a recommendation should be made to change the policy to incorporate the offense in question.

Some of the Code sections may be listed in more than one section below; such duplication is indicated by an asterisk. In such cases, staff are to check subsequent sections of the Program Statement to determine whether the offense is a crime of violence or an offense that would otherwise preclude an inmate's receiving certain Bureau program benefits.

6. OFFENSES CATEGORIZED AS CRIMES OF VIOLENCE

a. Criminal Offenses That are Crimes of Violence in **All Cases**. Some Bureau policies or programs require a determination that an inmate committed a crime of violence, for example, the Program Statement on Inmate Discipline and Special Housing Units. Other policies or programs, such as early release pursuant to 18 U.S.C. § 3621(e), indicate that an inmate could be denied the benefits of such programs if he or she was convicted of an offense listed in either Section 6 or 7.

All Cases

Any conviction for an offense listed below is categorized as a crime of violence.

(1) Title 18, United State Code Sections

♦ 32	destruction of aircraft
♦ 34	penalty when death results
♦ 35(b)	conveying false information that harms human life
♦ 36	firing weapons into group of persons **(VCCLEA addition)**
♦ 37	violence at international airports **(VCCLEA addition)**
♦ 43(b)	animal enterprise terrorism causing death or injury
♦ 81	arson w/in maritime jurisdiction
♦ 111	assaulting officers of the United States
♦ 112(a)	assaulting foreign officials
♦ 113	assaults w/in maritime jurisdictions
♦ 114	maiming w/in maritime jurisdiction
♦ 115	threatening family member of a federal official

♦ 175	biological weapons
♦ 231	civil disorders
♦ 245	federally protected activities
♦ 247(a)(1)	damage to religious property/obstruction of exercise of religion
♦ 247(a)(2)	obstruction of persons in free exercise of religion
♦ 351	assassination of cabinet and congress members
♦ 373	soliciting to commit a violent act
♦ 753	rescue of an inmate to prevent execution
♦ 842	explosive materials
♦ 844	penalties
♦ 871	threats against the President
♦ 875(a),(b),(c)	interstate communications
♦ 878	threats against foreign officials
♦ 879	threats against former presidents
♦ 922(a)(4),(a)(7),(a)(8),(b)(4),(b)(5),(d)(1),(d)(2),(d)(4),(d)(8),(o),(p)	firearms violations
♦ 924(c)	firearms used in violent or drug trafficking crimes
♦ 930(b)&(c)	possession of firearms in federal facilities
♦ 970(a)	damage of property owned by foreign governments
♦ 1091	genocide
♦ 1111	murder
♦ 1112	manslaughter
♦ 1113	attempt to commit murder or manslaughter
♦ 1114	murder of officers
♦ 1116	murder of foreign officials
♦ 1117	(conspiracy to murder)
♦ 1118	murder in correctional institution **(VCCLEA addition)**
♦ 1119	foreign murder of US national **(VCCLEA addition)**
♦ 1120	murder by escaped prisoner **(VCCLEA addition)**
♦ 1121	murder by state or local officer **(VCCLEA addition)**

♦ 1201 kidnapping

♦	1203	hostage taking
♦	1204	international parental kidnapping
♦	1364	interference by foreign commerce by violence
♦	1365	tampering with consumer products **except** 1365(b),(c)
♦	1512(a)	killing witness or victim
♦	1513	retaliation against witness or victim
♦	1581	peonage
♦	1583	enticement into slavery
♦	1584	sale into servitude
♦	1585	slave trading
♦	1587	possession of slaves aboard a vessel
♦	1588	transporting slaves
♦	1651	piracy
♦	1652	citizens as pirates
♦	1653	aliens as pirates
♦	1655	assault on commander as pirates
♦	1659	attack to plunder a vessel
♦	1661	robbery ashore
♦	1751	assassination of president or staff
♦	1792	mutiny or riot
♦	1859	surveys interrupted
♦	1864	hazardous devices on federal lands
♦	1958	use of interstate commerce in murder for hire
♦	1959	violent crimes aiding racketeering
♦	1991	entering train to commit crime
♦	1992	wrecking trains
♦	2101	riots
♦	2111	special maritime jurisdiction
♦	2113(d),(e)	bank robbery and incidental crimes
♦	2114	assault of person carrying mail
♦	2115	breaking into post office
♦	2118(a),(b),(c)	robberies and burglaries involving controlled substances
♦	2119	crimes involving motor vehicles
♦	2191	cruelty to seamen
♦	2231(b)	assault or resistance
♦	2232(a)	destruction of property to prevent seizure
♦	2233	rescue of seized property
♦	2241	aggravated sexual abuse
♦	2242	sexual abuse
♦	2244(a)	abusive sexual contact

♦	2245	sexual abuse resulting in death (VCCLEA addition)
♦	2261	interstate domestic violence (VCCLEA addition)
♦	2275	firing or tampering with vessels
♦	2276	breaking and entering vessels
♦	2280	violence against maritime navigation (VCCLEA addition)
♦	2281(NOT(A))	violence against fixed platforms (VCCLEA addition)
♦	2332	penalties for homicide
♦	2332a	use of weapons of mass destruction (VCCLEA addition)
♦	2340A	torture
♦	2383	rebellion or insurrection
♦	2384	sedition conspiracy
♦	2385	advocating the overthrow of the government
♦	2389	recruiting for service against U.S.
♦	2390	enlistment to serve against U.S.
♦	2421	transportation for illegal sexual activity
♦	2422	coercion into interstate travel for illegal sexual activity
♦	2423	transportation of minors for illegal sexual activity

(2) Title 21 United States Code Sections

♦	841(e)	boobytraps on federal property
♦	848(e)	death penalty for criminal offenses
♦	858	endangering human life while manufacturing controlled substances

(3) Title 26 United States Code Sections

♦	5861(a) thru (l)	firearms

(4) Title 42 United States Code Sections

♦	2000(e)(13)	killing of officer while enforcing Equal Employment Act
♦	2283(a)	protection of nuclear inspectors
♦	2284(a)	sabotage of nuclear facilities
♦	3631	interference with housing

(5) Title 49 United States Code Sections

♦	46502	aircraft piracy
♦	46504	interference with flight crew members
♦	46505(c)	carrying a weapon on an aircraft
♦	46507	false information and threats

b. * Title 18, United States Code Section 2113(a). Title 18, United States Code Section 2113(a) provides in part:

> "Whoever, by force and violence, or by intimidation, takes or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; . . . shall be fined under this title or imprisoned not more than twenty years, or both."

This statute covers various offenses, including not only bank robbery but also embezzling bank funds, stealing bank property, and bank larceny.

With regard to the specific crime of bank robbery, the offense shall be considered a crime of violence, since the offense involves an explicit or implicit threat of force and thus has as an element the threatened use of physical force against the person or property of another. For offenses pursuant to § 2113(a) other than bank robbery, see Section 7.e. below.

c. Conspiracy, Attempt, and Similar Offenses Which Involve an Underlying Offense. The statutes listed in this section cover conspiracy offenses (see, e.g., 18 U.S.C. § 371) when an individual has planned with others to commit a particular crime. Other listed statutes cover attempted offenses, i.e. when an individual tried but did not succeed in committing the crime. In reviewing these types of offenses, it is necessary to examine the "underlying offense" (what the defendant was conspiring to do or attempting to do). If the underlying offense is categorized as violent pursuant to Section 6.a. of this Program Statement, e.g., murder, then the attempt or the conspiracy offense is also

violent. The underlying offense will be included in the PSI and may be noted on the J&C.

Other statutes listed in this section do not criminalize behavior but set out penalties that result from violating other statutes.

> Example: 18 U.S.C. § 924(a)(1)(B) provides that whoever **"knowingly violates subsection (a)(4),(f),(k),(r),(v), or (w) of section 922 . . . shall be fined under this title, imprisoned not more than five years, or both."**
>
> The J&C may indicate the sentence was imposed pursuant to the penalty provisions of § 924(a)(1)(B) without indicating the conviction for the underlying offense. The PSI, however, notes the underlying conviction, "Transporting a Destructive Device in Interstate Commerce" [18 U.S.C. § 922(a)(4)]. In order to determine whether the offender's current offense is violent, staff should assess whether the underlying offense is violent in accordance with Section 6.a. of this Program Statement; if the underlying offense is violent, then the offender should be deemed violent.

The following offenses **may** be violent depending on the underlying offense.

Title 18, United States Code Sections

♦ *241	conspiracy to deprive civil rights (if conspiracy)
♦ *371	conspiracy to commit offense/fraud against U.S.
♦ *372	conspiracy to impede or inure officer
♦ *924	penalties for firearms violations
♦ *1962	racketeering
♦ *2118(d)	robberies involving controlled substances

7. OFFENSES THAT AT THE DIRECTOR'S DISCRETION SHALL PRECLUDE AN INMATE'S RECEIVING CERTAIN BUREAU PROGRAM BENEFITS. For certain Bureau programs, such as early release pursuant to 18 U.S.C. § 3621(e) and placement in Intensive Confinement Centers, an inmate may be denied program benefits if he or she was convicted of an offense listed in either this section or Section 6. If an

inmate is denied the benefit of such a program, staff must carefully describe the basis for the denial. For example, if an inmate is convicted of an offense listed in this section, the inmate shall be denied a program benefit because he or she committed an offense identified at the Director's discretion, rather than a crime of violence.

As an exercise of the discretion vested in the Director, an inmate serving a sentence for an offense that falls under the provisions described below shall be precluded from receiving certain Bureau program benefits.

Inmates whose current offense is a felony that:

- has as an element, the actual, attempted, or threatened use of physical force against the person or property of another, or
- involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or
- by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or
- by its nature or conduct involves sexual abuse offenses committed upon children.

Thus, for an inmate to receive Bureau program benefits such as those mentioned above, he or she must not be convicted of an offense listed in this section or in Section 6.

a. Criminal Offenses with an Enhanced Base Offense Level. Convictions for an offense listed below may or may not satisfy the standard listed in the introductory portion of Section 7.

At the time of sentencing, the court makes a finding of whether an offense listed below involved the use of force, and this finding is reflected in the PSI section entitled "Offense Computation," subsection entitled "Base Offense Level." This subsection references a particular U.S. Sentencing Guideline

provision that distinguishes between violations of the particular criminal code section that are committed with and without force.

Example: Title 18 United States Code Section 241, Conspiracy Against Rights provides:

> **"If two or more persons conspire to injure, oppress, threaten or intimidate any person . . . in the free exercise or enjoyment of any right or privilege. . . ."**

This crime may or may not be committed through the use of force or threatened use of force, since one can be oppressed through means other than force. Pursuant to U.S. Sentencing Guideline Section 2H2.1:

- if the crime involved obstructing an election or registration, and the obstruction occurred using force or threat of force against persons or property, the base offense level is 18, or
- if the obstruction occurred without the use or threatened use of force, such as forgery, fraud, theft, deceit, etc., the base offense level is 12.

If an offender was convicted of an offense listed below, case management staff must examine the base offense level to determine whether the offense would preclude the inmate from receiving certain Bureau program benefits. If the PSI does not include an explanation as to the reason for assigning a particular base offense level, case management staff may need to examine the particular Sentencing Guideline referenced.

Some of the offenses listed below may correspond to more than one Sentencing Guideline, only one of which includes a base level adjustment for the use or threatened use of force. Accordingly, it is possible that an examination of the Offense Computation section of the PSI may reveal no mention of the use or threatened use of force. When the PSI fails to explain the reason for assigning a particular base offense level, case management staff must examine the particular Sentencing Guideline referenced to determine whether the court found that the use of force was implicated in the offense.

Case management staff may contact institution legal staff or Regional Counsel if they have questions regarding this section. A list of offenses for which the Sentencing Guidelines base offense level is affected by the use or threatened use of force follows. At the Director's discretion, inmates with such an offense shall be precluded from receiving certain Bureau program benefits.

Title 18, United States Code Sections

♦	33	destruction of motor vehicles or facilities
♦	241	conspiracy against rights **(for other than conspiracy)**
♦	242	deprivation of rights under color of law
♦	592	putting troops at polls
♦	593	interference by armed forces
♦	1791	possessing contraband in prison
♦	1952	transporting items in aid of racketeering
♦	*2116	railway or steamboat post office
♦	2231(a)	assault on persons executing search warrant
♦	2381	treason

b. Criminal Offenses with a Specific Offense Characteristic Enhancement. Convictions for an offense listed below, like those listed in Section 7.a., may or may not satisfy the standard listed in the introductory portion of Section 7.

At the time of sentencing, the court makes a finding of whether the offense involved the use or threatened use of force, and this finding is reflected in the PSI section entitled "Offense Computation," subsection entitled "Specific Offense Characteristics." This subsection references a particular U.S. Sentencing Guideline that provides for an increase in the Total Offense Level if the criminal violation was committed with force.

> Example: Section 841 of Title 21, United States Code makes it a crime to manufacture, distribute, or possess with the intent to distribute drugs. Under the Sentencing Guidelines (§ 2D1.1 and § 2D1.11), the defendant could receive an increase in his or her base offense level because of a "Specific Offense Characteristic" (for example, if a dangerous weapon was possessed during commission of the offense), the court would increase the defendant's base

offense level by two levels. This particular "Specific Offense Characteristic" (possession of a dangerous weapon during the commission of a drug offense) poses a serious potential risk that force may be used against persons or property. Specifically, as noted in the U.S. Sentencing Guidelines § 2D1.1., application note 3, the enhancement for weapon possession reflects the increased danger of violence when drug traffickers possess weapons. Accordingly, an inmate who was convicted of manufacturing drugs, (21 U.S.C. § 841) and received a two-level enhancement for possession of a firearm has been convicted of an offense that will preclude the inmate from receiving certain Bureau program benefits.

In some cases, an inmate may be convicted of an offense listed in this section as well as 18 U.S.C. § 924(c)(1), use of a firearm during a crime of violence or drug trafficking crime. According to the U.S. Sentencing Guidelines, if a defendant receives a § 924(c)(1) conviction, the court may not assess a two-level ▒Specific Offense Characteristic▒ enhancement for possession of a firearm; however, in light of the Supreme Court ruling in *Bailey v. U.S.*, 116 S.Ct. 501 (1995), a number of § 924(c)(1) convictions have been vacated. In *Bailey*, the Court held that the term ▒use▒ connotes an active employment of the firearm. If any of the offenses listed in this section were accompanied by a § 924(c)(1) conviction that was subsequently vacated due to the *Bailey* decision, staff shall presume that the inmate would have received a two-level ▒Specific Offense Characteristic▒ enhancement for possession of a firearm unless there is a specific court order to the contrary. Thus, absent a court order specifically denying the application of a two point enhancement for possession of a firearm, the inmate will not receive certain Bureau program benefits.

Some of the offenses listed below may correspond to more than one Sentencing Guideline, only one of which includes a Specific Offense Characteristic for the use of force. Alternatively, the PSI may fail to adequately describe the Specific Offense Characteristic that underlies the increase in offense level. In either case, it is possible that an examination of the Offense Computation section of the PSI reveals no mention of the use of force. If this occurs, case management staff must examine the particular Sentencing Guideline referenced to determine whether

the court found that the use of force was implicated in the offense.

Example: The PSI in the above scenario may state "SOC (specific offense characteristic) 2F1.1(4) increase 2 levels." If the Report does not further state "since the offense involved the conscious or reckless risk of serious bodily injury, increase by two levels pursuant to 2F1.1(4)," the case management staff may have to examine Guideline 2F1.1(4) to determine that the only basis for this particular increase is a finding that the offense included the risk of bodily injury.

Case management staff may contact institution legal staff or Regional Counsel if they have questions regarding this section. Below is a list of offenses for which there could be a Specific Offense Characteristic enhancement for the use of force:

(1) Title 16, United States Code Sections

- 773e(a)(2), (3),(4),(6) violation of Northern Pacific Halibut Act
- 773g violation of Northern Pacific Halibut Act
- 1857(a)(D), (E),(F),(H) violation of National Fishery Management Program
- 1859 violation of National Fishery Management Program
- 2435(4),(5), (6),(7) violation of Antarctic Marine Living Resources Convention
- 2438 violation of Antarctic Marine Living Resources Convention
- 3606 violation of North Atlantic Salmon Fishing
- 3637(a)(2), (3),(4),(6), (c) violation of Pacific Salmon Fishing
- 5009(5),(6), (7),(8) violation of North Pacific Anadromous Stock Convention
- 5010(b) violation of North Pacific Anadromous Stock Convention

(2) Title 18, United States Code Sections

♦ 755	officer permitting escape
♦ 757	procures escape for prisoner of war
♦ 874	kickbacks from public works employees
♦ 894	extending credit through extortionate means
♦ 1163	embezzlement/theft from Indian organizations
♦ 1503	influencing or injuring officer or juror
♦ 1505	obstruction of proceedings before departments or agencies
♦ 1511	obstruction of state or local law enforcement
♦ 1516	obstruction of a federal audit
♦ 1517	obstructing financial examination
♦ 1951	interference with commerce by threats/violence
♦ 2112	robbery of personal property of United States
♦ *2116	breaking into a mail car

(3) Title 21, United States Code Sections

♦ 841(NOT(e)),	controlled substance violation
♦ *846	attempt and conspiracy

(4) Title 26, United States Code Sections

♦ 7212	attempt to interfere with revenue laws
♦ 7214	unlawful acts by employees of the IRS

(5) Title 30, United States Code Sections

♦ 1461(a)(3), (4),(5),(7)	resisting officers for violations under Deep Seabed Mineral Resources Act
♦ 1463	violations of Deep Seabed Mineral Resources Act

(6) Title 33, United States Code Section

♦ 1232(b)(2)	ports and waterways safety enforcement provisions

(7) Title 40, United States Code Section

♦ 193f(a)	security of Capitol grounds and buildings

(8) Title 42, United States Code Sections

♦ 1973aa	application of prohibition to other States
♦ 1973aa-1	residence requirements for voting
♦ 1973aa-1a	bilingual election requirements
♦ 1973aa-3	penalty
♦ 1973bb	enforcement of twenty-sixth amendment
♦ 1973gg-10	criminal penalties
♦ 2283(b)	protection of nuclear inspectors
♦ 19151(2), (3),(4),(5)	violation of Ocean Thermal Energy Conversion Act
♦ 9152(d)	violation of Ocean Thermal Energy Conversion Act

(9) Title 46, United States Code Section

♦ 1903	Manufacture, Distribution, or possession with intent to manufacture controlled substances

(10) Title 49, United States Code Section

♦ 46505(b)	carrying a weapon on an aircraft

c. Criminal Offenses That May Preclude an Inmate's Receiving Certain Bureau Program Benefits. In addition to Sections 7.a. and 7.b. above, an inmate may be precluded from receiving certain Bureau program benefits based on an offense listed in this section. For the offenses listed below, the Sentencing Guidelines may provide little insight into the court's findings. Accordingly, rather than simply examining the base offense level or the specific offense characteristics, case managers must carefully examine the entire Offense Computation section of the PSI and, if necessary, the Offense Conduct section to determine if the offense would preclude an inmate's receiving certain Bureau program benefits based on whether the offense satisfies the standard listed in the introductory portion of Section 7.

The following offenses may preclude an inmate's receiving certain Bureau program benefits based on a variety of factors.

(1) Title 7, United States Code Section

- 473c-1 offenses in relation to sampling of cotton

(2) Title 16, United States Code Sections

- 5106(e)(5), (6),(7),(9), (f)(2) violation of Atlantic Coast Fisheries Cooperative Management

(3) Title 18, United States Code Sections

- 700 desecration of the flag of the United States
- 751 escape from federal prison
- 752 instigating/assisting escape from federal prison
- 831 prohibited acts involving nuclear materials
- 876 mailing threatening communications
- 877 mailing threatening communications from foreign country
- 1153 offenses within Indian Country
- 1512(b) tampering with a witness/victim/informant
- 1708 theft or receipt of stolen mail
- 1792 mutiny and riot in prison
- 1956 money laundering
- 2117 breaking into carrier facilities
- 2152 destruction of submarine and torpedo works
- 2153 destruction of war materials
- 2154 production of defective war material
- 2155 destruction of national defense materials
- 2156 production of defective national defense material
- 2192 incitation of seamen to revolt
- 2193 mutiny
- 2247 repeat offenders
- 2387 activities involving armed forces

(4) Title 40, United States Code Sections

- 193f(a),(b) security of Capitol grounds and buildings

d. Conspiracy, Attempt, and Other Offenses Which Involve an Underlying Offense. Some of the statutes listed in this section cover conspiracy offenses (see, e.g., 21 U.S.C. § 846) when an individual has planned with others to commit a particular crime. Other listed statutes cover attempted offenses (see, e.g., 21 U.S.C. §§ 846 and 963) when an individual tried but did not succeed in committing the crime. In reviewing these types of offenses, it is necessary to examine the "underlying offense" (what the defendant was conspiring to do or attempting to do). If the underlying offense would preclude the inmate from receiving certain Bureau program benefits based on any of the other portions of Section 7 of this policy, the conspiracy or the attempt offense shall also preclude the inmate from receiving the same benefits. The underlying offense will be included in the PSI and may be noted on the J&C.

Example: The Judgment and Commitment Order may indicate a conviction for "Attempt and Conspiracy" (21 U.S.C. § 846). The accompanying Presentence Investigation Report will reference the underlying crime, in many cases it will be "Possession with Intent to Distribute a Controlled Substance" (21 U.S.C. § 841). Staff should then review the underlying offense (in this case possession of controlled substance) to determine whether it satisfies the standard listed in the introductory portion of Section 7. As noted in the example in section b above, if the PSI indicates that the defendant received a 2 level increase for possessing a dangerous weapon, then the offense should preclude the inmate from receiving certain Bureau program benefits; if no such enhancement was given, the offense should not preclude the inmate from receiving such benefits.

(1) Title 18, United States Code Sections

- *241 conspiracy to deprive civil rights (if conspiracy)
- *371 conspiracy to commit offense/fraud against U.S.
- *372 conspiracy to impede or inure officer
- *924 penalties for firearms violations

♦ *1962	racketeering
♦ *2118(d)	robberies involving controlled substances

(2) Title 21, United States Code Sections

♦ *846	attempt and conspiracy
♦ 848	controlled substances violations as criminal enterprise
♦ 963	conspiracy or attempt to violate controlled substance laws

e. Special Circumstances

♦ Title 18, United States Code § 922(g). All offenses under 18 U.S.C. § 922(g) shall preclude an inmate from receiving certain Bureau program benefits.

♦ *Title 18, United States Code § 2113(a). Excluding bank robbery (see Section 6.b. above), other offenses covered by 18 U.S.C. § 2113(a), (e.g., bank larceny, etc.), shall be reviewed similarly to offenses in Section 7.b. Defendants may receive a Specific Offense Characteristic enhancement that will result in an increase in the base offense level. Such enhancements provide for an increase in the defendant's base offense level if:

- a firearm was discharged,
- a firearm or other dangerous weapon was brandished, displayed, possessed or used, or
- an express or implied threat of death was made (U.S.S.G. 2B3.2(b), Application Notes 2 and 6).

If a defendant received such an enhancement (or one of the other enhancements involving the use or threatened use of force), the offense shall preclude the inmate's receiving certain Bureau program benefits.

♦ Title 18, United States Code § 2243. A conviction for sexual abuse of a minor or ward shall preclude an inmate from receiving certain Bureau program benefits.

8. OFFENSES COMMITTED BEFORE NOVEMBER 1, 1987. The Sentencing Guidelines are generally not applicable for offenses committed before November 1, 1987. Accordingly, for offenses identified in Section 7 or offenses similar to those listed in Section 7 of this Program Statement that were committed before this date, case managers must make a determination, based on the narrative description of the crime contained in the PSI, whether the offense involved:

- the use, attempted use, or threatened use of force;
- the use, carrying, or possession of a dangerous weapon;
- a serious potential risk that force might be used against the person or property of another; or
- sexual abuse committed upon children.

Offenses listed in Section 6, Crimes of Violence, or offenses similar to those listed in Section 6, which were committed before November 1, 1987, shall be treated in the same manner as ※new law※ offenses.

9. CRIMES CODIFIED PURSUANT TO THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994. The VCCLEA created a number of new Federal criminal offenses and enhanced penalties for several existing offenses. Some of the new offenses are included in the above lists, but the lists will be revised as needed after the U.S. Sentencing Commission drafts new guidelines. These lists will also be updated periodically to reflect statutory changes or at the Director's discretion.

/s/
Kathleen M. Hawk
Director

APPENDIX 11

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103d CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 103-320

RESIDENTIAL SUBSTANCE ABUSE TREATMENT IN FEDERAL PRISONS

NOVEMBER 3, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3350]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3350) to establish a program of residential substance abuse treatment within Federal prisons, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SUBSTANCE ABUSE TREATMENT IN FEDERAL PRISONS.

Section 3621 of title 18, United States Code, is amended—

(1) in the last sentence of subsection (b), by striking ", to the extent practicable,"; and

(2) by adding at the end the following new subsection:

"(e) SUBSTANCE ABUSE TREATMENT.—

"(1) PHASE-IN.—In order to carry out the requirement of the last sentence of subsection (b) of this section, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall provide substance abuse treatment—

"(A) for not less than 50 percent of eligible prisoners by the end of fiscal year 1995, with priority for such treatment accorded based on an eligible prisoner's proximity to release date;

"(B) for not less than 75 percent of eligible prisoners by the end of fiscal year 1996, with priority for such treatment accorded based on an eligible prisoner's proximity to release date; and

79-006

U.S. DI[illegible]

"(C) for all eligible prisoners by the end of fiscal year 1997 and thereafter, with priority for such treatment accorded based on an eligible prisoner's proximity to release date.

"(2) INCENTIVE FOR PRISONERS' SUCCESSFUL COMPLETION OF TREATMENT PROGRAM.—

"(A) GENERALLY.—Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provide under paragraph (1) of this subsection, shall remain in the custody of the Bureau for such time (as limited by subparagraph (B) of this paragraph) and under such conditions, as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for substance abuse and discontinue such conditions on determining that substance abuse has resurred.

"(B) PERIOD OF CUSTODY.—The period the prisoner remains in custody after successfully completing a treatment program shall not exceed the prison term the law would otherwise require such prisoner to serve, but may not be less than such term minus one year.

"(3) REPORT.—The Bureau of Prisons shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives on January 1, 1996, and on January 1 of each year thereafter, a report. Such report shall contain—

"(A) a detailed quantitative and qualitative description of each substance abuse treatmant program, residential or not, operated by the Bureau;

"(B) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible, and

"(C) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this title.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in each fiscal year such sums as may be necessary to carry out this subsection.

"(5) DEFINITIONS.—As used in this subsection—

"(A) the term 'residential substance abuse treatment' means a course of individual and group activities, lasting between 6 and 12 months, in residential treatment facilities set forth from the general prison population—

"(i) directed at the substance abuse problems of the prisoner; and

"(ii) intended to develop the prisoner's cognitive, behaverial, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems; and

"(B) the term 'eligible prisoner' means a prisoner who is—

"(i) determined by the Bureau of Prisons to have a substance abuse problem; and

"(ii) willing to participate in a residential substance abuse treatment program.".

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 3350 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

Substance abuse treatment for prison inmates is a powerful tool for reducing recidivism, easing prison overcrowding, and ultimately preventing crime. H.R. 3350 will ensure that by 1997 every Federal prisoner who has a substance abuse problem and who is willing to undergo treatment will be placed in a long-term residential treatment program.

BACKGROUND

The link between substance abuse and crime is well-established. Drug addiction can increase an offender's rate of predatory criminal activity by 600 percent.[1] Much of the rapid and financially draining increase in prison populations over the past several years is attributable to substance abuse.[2] Substance abuse also is a major cause of the tremendous growth in the Federal prison population over the past decade, and far too few Federal inmates are receiving treatment for substance abuse.[3] Offenders with substance abuse problems also have an extraordinarily high rate of recidivism.[4] It is the Committee's belief that releasing an inmate into the community without treating his or her substance abuse problem while the inmate is in custody is to virtually guarantee future crime.

With appropriate treatment, the recidivism rate of substance abusers can be dramatically reduced. A study of one residential treatment center, the Stay'N Out program at New York's Arthur Kill Correctional Facility, found that 78 percent of its graduates were still out of prison three years after release, while about half of comparable substance-abusing inmates who do not receive treatment will be back in prison within the same period.[5] In Wisconsin, a follow-up study of prison substance abuse treatment graduates who had been out of prison for between one and seven years found that 76 percent of these individuals had remained out of prison.[6] Virginia's Southampton Intensive Treatment Center has achieved an 84 percent success rate—the 15 percent recidivist rate among its graduates is well below that for untreated prisoners.[7]

It is the Committee's judgment that substance abuse treatment in prison not only has valuable crime-prevention benefits, but is among the most useful responses to substance abuse problems more generally. Incarceration may offer the best opportunity for society to reach substance-abusing individuals who are committing other crimes. The Committee is informed that outpatient treatment programs have produced mixed results, and that it is extremely difficult for the substance abuser to reform himself or herself when he or she returns each evening to the community in which the problem developed.

Despite the benefits, and despite studies showing that nearly 50 percent of Federal inmates have substance abuse problems, the Federal government is now treating only a small fraction of eligible inmates. Since the Bureau of Prisons began its current substance abuse treatment program in 1990, it has treated only 6,000 of the more than 100,000 inmates who have been incarcerated in Federal institutions during that period. There is an immense gap between

[1] See Johnson, Lipton & Wish, "Facts About the Criminality of Heroin and Cocaine Abusers and Some New Alternatives to Incarceration," (New York: 1986); "Chaiken, Crime Rates and Substance Abuse Among Types of Offenders" in Johnson & Wish, eds., "Crime Rates Among Drug Abusing Offenders: Final Report to the National Institute of Justice" (1986).

[2] See "Federal Prison Substance Abuse Treatment Availability Act of 1991." Hearing Before the Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary, 102d Cong., 1st Sess. (June 6, 1991) (testimony of Michael Quinlan, Director, Federal Bureau of Prisons).

[3] Id.

[4] Id. (testimony of Robert Anderson; testimony of Douglas Lipton).

[5] See Wexler, Falkin & Lipton, "A Model Prison Rehabilitation Program—An Evaluation of the 'Stay'N Out' Therapeutic Community: Final Report to the National Institute on Drug Abuse" (1988).

[6] See "The Wisconsin Drug Abuse Treatment Unit," monograph published by the Bureau of Justice Assistance (August 1990).

[7] See "An Evaluation: Southampton Intensive Treatment Center—A Report to the Virginia State Crime Commission, Virginia Department of Corrections (1992).

what could be done to prevent crime with substance abuse treatment and what is now being done by the Bureau of Prisons.

The Clinton Administration, both in the testimony of its representatives before the Subcommittees on Crime and Criminal Justice and in its 1993 Interim Drug Control Strategy, has indicated its intention to make greater use of the opportunities to provide substance abuse treatment in prison.[9] H.R. 3350 will further that policy objective.

BRIEF EXPLANATION OF H.R. 3350

H.R. 3350 is intended to expand the Bureau of Prisons' substance abuse treatment program so that every eligible inmate can receive substance abuse treatment. It requires the Bureau of Prisons to provide treatment for at least 50 percent of eligible prisoners by the end of fiscal year 1995, for at least 75 percent of eligible prisoners by the end of fiscal year 1996, and for all eligible prisoners by the end of fiscal year 1997.

As short-term treatment programs often have little or no lasting effect on the abuser,[9] the treatment must be long-term—lasting from six to twelve months. It also must be residential, with the prisoners in treatment housed apart from the general prison population for the entire duration of the treatment program.

H.R. 3350 also provides that the Bureau of Prisons may reduce, by up to one year, the sentence of an inmate who successfully completes the treatment program. The Committee believes such an incentive is necessary to draw into treatment many inmates who may otherwise not be willing to undergo a difficult and painful treatment program. Residential substance abuse programs are rigorous, 24-hour-a-day experiences requiring a great deal of work, effort, and commitment from the participants. The experience of treatment programs at the State level shows that inmates who are given an incentive to begin treatment often realize that the effort will ultimately yield a meaningful improvement in the inmate's life opportunities, and will undertake to complete the program.[10]

102D CONGRESS

In the 102d Congress, on June 5, 1991, the Subcommittee on Crime and Criminal Justice held a hearing on H.R. 548 (which was substantially similar to H.R. 3350).[11] The text of H.R. 548 subsequently was incorporated into a comprehensive anti-crime bill reported by the Subcommittee on August 26, 1991. That bill was merged with other legislation to form H.R. 3371, which was reported by the Judiciary Committee on September 26, 1991. The House of Representatives passed H.R. 3371 on October 22, 1991.

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[9] See statement of Deputy Attorney General Philip B. Heymann before the Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, U.S. House of Representatives, concerning The Violence Crime Control and Law Enforcement Act of 1993 at 6-9 (October 21, 1993).

[9] See "Federal Prison Substance Abuse Treatment Availability Act of 1991," Hearing Before the Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary, 102d Cong., 1st Sess., pagein (June 5, 1991).

[10] Id. (testimony of John David, Jose Luis Diaz and Vanessa Hodges, graduates of New York's Stay'N Out program).

[11] "Federal Prison Substance Abuse Treatment Availability Act of 1991," Hearing Before the Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary, 102d Cong., 1st Sess. (June 5, 1991).

After a House-Senate conference on H.R. 3371, the conferees reported a bill which included the substance of H.R. 548. The bill reported by the conference passed the House on November 27, 1991, but failed to become law because the Senate never voted on it.

103D CONGRESS

In the 103d Congress, an initiative for providing substance abuse treatment in Federal prison was again included in a comprehensive anti-crime bill, H.R. 3131. On October 21, 1993, the Subcommittee on Crime and Criminal Justice held a hearing on selected aspects of H.R. 3131, including the sections on substance abuse treatment in prison. On October 26, 1993, the substance abuse treatment in Federal prisons proposal in H.R. 3131 was introduced as a separate bill, H.R. 3350.

COMMITTEE ACTION

On October 28, 1993, the Committee on the Judiciary met to consider H.R. 3350. The Committee adopted two amendments to H.R. 3350. The first amendment would have changed the treatment duration requirement to be "up to twelve months," with no minimum length of treatment. By unanimous consent, the amendment was modified to set a six-month minimum on treatment duration, and as modified it was adopted by voice vote.

The second amendment directed the Bureau of Prisons to give priority of treatment based on an eligible prisoner's proximity to release date. This amendment was adopted by voice vote.

A reporting quorum being present, the Committee ordered H.R. 3350, as amended, favorably reported to the full House by a roll call vote of 34 to 1.

SECTION-BY-SECTION ANALYSIS

SECTION 1

H.R. 3350 has one section, which amends Section 3621 of title 18 by adding a new subsection (e).

Paragraph (1)

Paragraph (1) of this new subsection directs the Bureau of Prisons to provide residential substance abuse treatment to at least 50% of willing inmates with substance abuse problems by the end of fiscal year 1995; to at least 75% of willing inmates with substance abuse problems by the end of fiscal year 1996; and to all willing inmates with substance abuse problems by the end of fiscal year 1997. Although the term "substance abuse" is not defined, the Committee intends it to include all substance abuse that has a bearing on criminal behavior, including alcohol abuse, abuse of legal drugs, and abuse of illicit drugs and controlled substances.

A concern was raised by the Department of Justice that the requirement in H.R. 3350 for treatment for "all" prisoners by the end of FY 1997 might be interpreted to mean that every eligible prisoner must either have received treatment or be receiving treatment in that year, even if the prisoner has several years remaining on his or her sentence. That was not the intent of the Committee, and

an amendment to H.R. 3350 during Committee mark-up has made the intent of the Committee clear.

As reported by the Committee, H.R. 3350 explicitly directs the Bureau of Prisons to give priority in making treatment available to prisoners based on proximity to their release dates. Thus, every eligible prisoner in a Federal facility at the end of FY 1997, and every eligible prisoner entering thereafter, will have the opportunity to receive treatment at some point during their incarceration on a priority basis. Under the reported bill, the Bureau of Prisons must make a determination of proximity of release date, and may provide treatment at an appropriate point in the inmate's term of imprisonment based on that determination. The bill does not require that an inmate receive treatment in the first year of a 20-year sentence, if the Bureau of Prisons determines that treatment would be more appropriate at a later point. Neither does it preclude a determination by the Bureau of Prisons that such treatment would be appropriate in an inmate's first year of incarceration.

Paragraph (2)

Paragraph (2)(a) of this new subsection provides that an inmate who, in the judgment of the Bureau of Prisons, has successfully completed its residential substance abuse treatment program shall remain in the custody of the Bureau of Prisons for such time and under such conditions as the Bureau of Prisons deems appropriate. If those conditions are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau of Prisons must periodically test the inmate for substance abuse and discontinue such conditions on determining that such abuse has recurred.

Paragraph (2)(b) of this new subsection provides that the prisoner's total period of custody shall not be longer than the period of custody the inmate would otherwise have been required to serve, but may not be less than such term minus one year. In effect, this subparagraph authorizes the Bureau of Prisons to shorten by up to one year the prison term of a prisoner who has successfully completed a treatment program, based on criteria to be established and uniformly applied by the Bureau of Prisons.

Paragraph (3)

Paragraph (3) of the new subsection requires the Bureau of Prisons to submit a detailed report to the Committees on the Judiciary of the Senate and the House of Representatives on January 1 of each year on the nature, extent, and success of its substance abuse treatment programs.

Paragraph (4)

Paragraph (4) of the new subsection authorizes in each fiscal year the appropriation of such funds as are necessary to carry out this new subsection.

Paragraph (5)

Paragraph (5)(A) of the new subsection defines "residential substance abuse treatment" as a course of individual and group activities, lasting between 6 and 12 months, in residential treatment fa-

cilities set apart from the general prison population. The course of treatment must be directed at the substance abuse problems of the prisoner, and must be intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems.

Paragraph 5(B) defines "eligible prisoner" as a prisoner who is determined by the Bureau of Prisons to have a substance abuse problem and who is willing to participate in a residential substance abuse treatment program.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 3350, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 1, 1999.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3350, a bill to establish a program of residential substance abuse treatment within federal prisons.

Enactment of H.R. 3350 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3350.
2. Bill title: A bill to establish a program of residential substance abuse treatment within federal prisons.
3. Bill status: As ordered reported by the House Committee on the Judiciary on October 28, 1999.
4. Bill purpose: H.R. 3350 would require the Bureau of Prisons to provide all federal prisoners with substance abuse problems the opportunity to participate in a substance abuse treatment program that lasts between 6 and 12 months. This bill would establish a phased implementation schedule for meeting this requirement. H.R. 3350 also would allow prisoners who successfully complete a substance abuse treatment program to be released up to one year early.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1996	1996	1998	1997	1998
Estimated authorization of appropriations	0	20	33	48	48
Estimated outlays	0	17	39	46	48

The costs of this bill fall within budget function 750.

Basis of estimate: Under current law, the Bureau of Prisons provides substance abuse treatment to the extent possible given available funds. Currently, approximately 3,000 prisoners in 31 federal prisons are participating in 9-month substance abuse treatment programs, at a cost of about $2,500 per participating prisoner. This cost includes in-prison expenses as well as costs to support community transition services for the prisoners upon release from prison. Consistent with the implementation schedule required by this bill and assuming that most eligible prisoners would participate, CBO estimates that an additional 8,000 prisoners in fiscal year 1995, 13,000 prisoners in fiscal year 1996, and 18,000 prisoners in fiscal year 1997 and thereafter would participate in treatment programs. We estimate that these programs would cost the Bureau of Prisons an additional $20 million in fiscal year 1995 and $33 million in fiscal year 1996, as they are phased in. Costs would rise to $48 million in fiscal year 1997 and similar amounts in subsequent years.

Because this bill would allow prisoners who successfully complete a substance abuse treatment program to be released up to one year early, there could be some savings (up to $20,000 per prisoner) to the extent that prisoners covered by this provision serve shorter prison terms. However, CBO has no basis for estimating the amount of such savings.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 3350 would not affect direct spending on receipts. Therefore, pay-as-you-go procedures would not apply to the bill.
7. Estimated cost to State and local governments: None.
8. Estimated comparison: None.
9. Previous CBO estimate: None.
10. Estimate prepared by: Susanne Mehlman.

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11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3350 will have no significant inflationary impact on prices and costs in the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3621 OF TITLE 18, UNITED STATES CODE

§ 3621. Imprisonment of a convicted person

(a) * * *
(b) PLACE OF IMPRISONMENT.—The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—
(1) * * *

* * * * * * *

The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another. The Bureau shall[, to the extent practicable,] make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse.

* * * * * * *

(c) SUBSTANCE ABUSE TREATMENT.—
(1) PHASE-IN.—In order to carry out the requirement of the last sentance of subsection (b) of this section, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall provide substance abuse treatment—
(A) for not less than 50 percent of eligible prisoners by the end of fiscal year 1995, with priority for such treatment accorded based on an eligible prisoner's proximity to release date;
(B) for not less than 75 percent of eligible prisoners by the end of fiscal year 1996, with priority for such treatment accorded based on an eligible prisoner's proximity to release date; and

(C) for all eligible prisoners by the end of fiscal year 1997 and thereafter, with priority for such treatment accorded based on an eligible prisoner's proximity to release date.

(2) INCENTIVE FOR PRISONERS' SUCCESSFUL COMPLETION OF TREATMENT PROGRAM.—

(A) GENERALLY.—Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provide under paragraph (1) of this subsection, shall remain in the custody of the Bureau for such time (as limited by subparagraph (B) of this paragraph) and under such conditions, as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for substance abuse and discontinue such conditions on determining that substance abuse has recurred.

(B) PERIOD OF CUSTODY.—The period the prisoner remains in custody after successfully completing a treatment program shall not exceed the prison term the law would otherwise require such prisoner to serve, but may not be less than such term minus one year.

(3) REPORT.—The Bureau of Prisons shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives on January 1, 1995, and on January 1 of each year thereafter, a report. Such report shall contain—

(A) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau;

(B) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible, and

(C) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this title.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in each fiscal year such sums as may be necessary to carry out this subsection.

(5) DEFINITIONS.—As used in this subsection—

(A) the term "residential substance abuse treatment" means a course of individual and group activities, lasting

between 6 and 12 months, in residential treatment facilities set forth from the general prison population—

(i) directed at the substance abuse problems of the prisoner; and

(ii) intended to develop the prisoner's cognitive, behavorial, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems; and

(B) the term "eligible prisoner" means a prisoner who is—

(i) determined by the Bureau of Prisons to have a substance abuse problem; and

(ii) willing to participate in a residential substance abuse treatment program.

ADDITIONAL VIEWS OF HON. BILL McCOLLUM, HON. HAMILTON FISH, HON. CARLOS J. MOORHEAD, HON. HENRY J. HYDE, HON. GEORGE W. GEKAS, HON. HOWARD COBLE, HON. LAMAR S. SMITH, HON. STEVEN SCHIFF, HON. JIM RAMSTAD, HON. CHARLES T. CANADY, AND HON. BOB GOODLATTE

We do not oppose H.R. 3350, a bill to establish a program of residential substance abuse treatment within Federal prisons. This bill is one of the series of small crime bills marked up in Judiciary Committee on October 28, 1993. However, this bill and the others considered on October 28, 1993 do not constitute major crime legislation and do not address the critical issue central to controlling the wave of violent crime rolling over our nation: stopping the revolving door that spins out those arrested for violent crimes faster and faster every day. Consequently, we do not believe this bill should be brought to the Floor until comprehensive legislation which does address this and other issues critical to reforming our criminal justice system is brought forward.

In addition to H.R. 3350, other bills considered by the Judiciary Committee on October 28, 1993 included grant programs designed to provide for community policing, drug treatment for State prison inmates, and more effective programs to reduce juvenile gang participation and drug trafficking. These narrow proposals do not deal with the major problems facing our criminal justice system, issues that could have been addressed if we were considering the omnibus bill, H.R. 3131, as originally scheduled, or the omnibus bill introduced by Congressman McCollum, H.R. 2872, and cosponsored by 80 Members.

Consideration of these bills may be politically expedient and may make for good political rhetoric, but it does not address the most serious problems facing the criminal justice system, including the inability to keep repeat, violent offenders off the streets. The statistics are alarming: one murder every 22 minutes, one forcible rape every 5 minutes, one violent crime every 22 seconds, one aggravated assault every 28 seconds. Every year nearly 5 million people in the United States are victims of violent crime. Most importantly, 7 percent of the criminals account for 80 percent of the violent crime. We must put a stop to this wave of violent crime by career criminals which is gripping our nation by passing comprehensive legislation that will reform the entire system from top to bottom. What is needed are laws that will take violent criminals off the streets, and keep them locked up, and laws that will restore swiftness and certainty of punishment to our criminal justice system.

Putting more police on the streets is a necessary, but not sufficient, component in addressing violent crime. The only way to get the repeat, violent offenders off the street for good is to increase police presence and build more prisons to hold these career crimi-

nals. The amount of violent crime has increased 531 percent since 1960, yet violent criminals are serving shorter sentences. The average time served by violent offenders is only 37 percent of the sentence given. Without a place to put those arrested, the State prison revolving door will simply spin faster. That is why H.R. 2872 proposes a cost sharing agreement with the States to build a national system of regional prisons to house State violent criminals. To qualify for this partnership States must require violent criminals to serve at least 85 percent of their sentences and enact mandatory minimum sentences for certain violent offenders. Unless comprehensive legislation is considered, this critical issue of prison overcrowding will not be addressed and deterrence and incapacitation of the truly dangerous will not be restored to the criminal justice system.

Additional provisions that are needed for comprehensive reform of the criminal justice system, which were not addressed by the bills reported from the Judiciary Committee, include the following: restrictions on the use of habeas corpus petitions to delay the carrying out of death sentences, the establishment of additional mandatory minimum sentences for major drug and firearm crimes, restoration of the Federal death penalty, establishment of a drug kingpin death penalty for those who traffic in very large quantities of narcotics, adoption of the good faith exception to the exclusionary rule, and establishment of tough new laws on terrorism and new protections for women and children.

These are all issues which the Members of the Judiciary Committee deserve to have an opportunity to debate and resolve. More importantly, the American people expect their elected representatives to act in a responsible and responsive manner to solve the serious and tragic problem of crime in our society.

The reality is that the Judiciary Committee's action on October 28, 1993 is likely to be the only substantive action on crime legislation by the Committee this year. To date the Committee has abdicated its legislative responsibility to construct strong anticrime legislation. It is also clear that these events could mean that the full House of Representatives will not be allowed to exercise its proper role in formulating this legislation either. Instead, the House might essentially go to a Conference Committee with a "carcass of a Crime bill." The Senate and a few House Members would be able to determine the contents of this Congress' crime bill.

In conclusion, this grant program may be helpful around the edges of the crime problem, but it does not provide the comprehensive response to violent crime that the American public demands. This bill should not have been brought to the House Floor under suspension of the rules until comprehensive legislation, which addresses the real crime emergency, had been considered by the Judiciary Committee.

BILL MCCOLLUM.
GEORGE W. GEKAS.
LAMAR SMITH.
HAMILTON FISH, JR.
HOWARD COBLE.
CARLOS J. MOORHEAD.
JIM RAMSTAD.
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